

(21,712.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 237.

THE UNITED STATES OF AMERICA, PAN-AMERICAN
BRIDGE COMPANY, DENNY-RENTON CLAY & COAL
COMPANY, ET AL., PLAINTIFFS IN ERROR,

vs.

CONGRESS CONSTRUCTION COMPANY, S. N. CROWEN,
AND PETER F. REYNOLDS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

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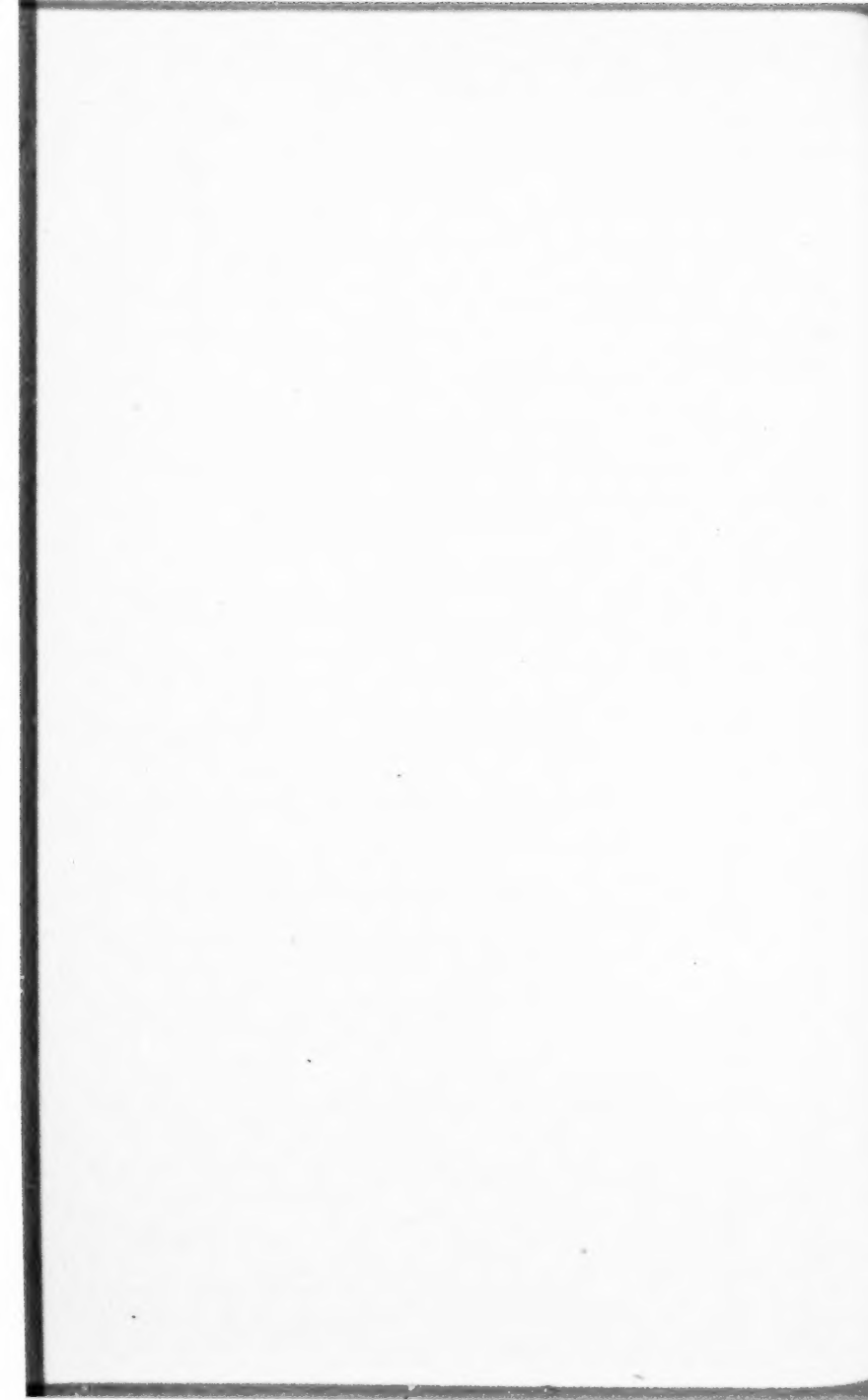
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- 1 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

29114.

UNITED STATES OF AMERICA

vs.

CONGRESS CONSTRUCTION COMPANY, S. N. CROWEN, and PETER F. REYNOLDS.

Mr. Edwin W. Sims, Attorney for United States of America.

Mr. Allen G. Mills & Mr. H. Erskine Campbell, Attorneys for S. N. Crowen.

Mr. Worth E. Caylor, Attorney for Peter F. Reynolds.

Messrs. Alden. Latham & Young, Attorneys for Robinson Manufacturing Company and August Weiffenbach, doing business as the Seattle Cornice Works.

Mr. Stewart Reed Brown, Attorney for F. T. Crowe & Company and Schwabacher Hardware Company.

Messrs. Ferguson & Goodnow, Attorneys for Western Hardware & Metal Company.

Messrs. Castle, Williams, Long & Castle, Attorneys for Pan-American Bridge Company, Denny-Renton Clay & Coal Company, Port Orchard Route, Martin Gravel Company, Seattle Paint Company, Hofius Steel & Equipment Company, International Fence & Freproofing Company.

- 2 Pleas in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court room, in the city of Chicago, in said District and Division, before the Hon. Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, on Saturday, the thirteenth day of February, in the year of our Lord one thousand nine hundred and nine being one of the days of the regular December term of said Court, begun Monday, the twenty-first day of December, 1908, and of our Independence the one hundred and thirty-third year.

H. S. Stoddard, Clerk.

- 3 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

29114.

UNITED STATES OF AMERICA

vs.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN, and PETER F. REYNOLDS.

Be it remembered, that on this day to-wit: the first day of June, 1908, come the United States of America, by Mr. Edwin W. Sims,

United States Attorney for the Northern District of Illinois, and filed in the clerk's office of said Court in the above entitled cause a certain Præcipe for Summons in the words and figures following to-wit:

Præcipe for Summons.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

Circuit Court, to the July Term, A. D. 1908.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION Co., a Corporation; S. N. CROWEN,
and PETER F. REYNOLDS.

In Debt, \$18,000.00.

Damages, \$30,000.00.

The Clerk of said Court will issue a summons in said cause to said defendants, in a plea of Debt of eighteen thousand dollars and damage in the sum of thirty thousand dollars direct the same to the United States Marshal for said District to execute, and make
4 it returnable to the July Term of said Court, 1908.

Dated this 1st day of June, A. D. 1908.

EDWIN W. SIMS,
Plaintiff's Attorneys.

H. S. Stoddard, Esq., Clerk.

(Endorsed:) Filed June 1, 1908. H. S. Stoddard, Clerk.

And on the same day to wit: the first day of June, 1908, there issued out of the clerk's office of said Court in said entitled cause a certain Summons. Which said Summons together with the Marshal's return thereon endorsed is in the words and figures following to-wit:

5 Circuit Court of the United States of America, Northern District of Illinois, ss:

The United States of America to the Marshal of the Northern District of Illinois, Greeting:

We command you to summon Congress Construction Company, a corporation, S. N. Crowen and Peter F. Reynolds, if found in your District, to be and appear before our Judges of our Circuit Court of the United States for the Northern District of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the District aforesaid, on the first Monday of July next, to answer unto United States of America, of a plea of Debt \$18,000.00, to its damage, as is

alleged, of Thirty Thousand (\$30,000.00), Dollars, and have you then and there this Writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this first day of June, in the year of our Lord one thousand nine hundred and eight and of our independence the 132nd year.

[SEAL.]

H. S. STODDARD, *Clerk*,
By JOHN H. R. JAMAR,
Chief Deputy.

6 I have served this writ within my district in the following manner to-wit:

Upon the within named S: N. Crowen and Peter F. Reynolds, by reading the same to and in the presence and hearing of each of them personally at the same time delivering to each of them personally a true copy thereof on the 2nd day of June, A. D. 1908.

Upon the within named Congress Construction Company, a corporation by reading the same to and in the presence and hearing of Gustave Ehrhart, president of the said company at the same time delivering to him personally a true copy thereof on the 3rd day of June, A. D. 1908.

LUMAN T. HOY,
U. S. Marshal,
By WM. E. CASS, *Deputy*.

(Endorsed:) Filed June 4, 1908. H. S. Stoddard, Clerk.

7 And on the same day to-wit: the first day of June, 1908, come- the United States of America by Mr. Edwin W. Sims, United States Attorney in and for the Northern District of Illinois, and filed in the Clerk's office of said Court its certain Declaration in the words and figures following to-wit:

8 *Declaration.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

UNITED STATES OF AMERICA

vs.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN
and PETER F. REYNOLDS.

Declaration.

Debt, \$18,000.00.
Damages, \$30,000.00.

United States of America, plaintiff in this suit, by E. W. Sims, United States Attorney in and for the Northern District of Illinois,

complains of the Congress Construction Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its residence and domicile in the City of Chicago in the Northern District of Illinois; S. N. Crowen, a resident of Chicago in the Northern District of Illinois, and Peter F. Reynolds, a resident of Chicago in the Northern District of Illinois, defendants in this suit, who have been summoned to answer said plaintiff in a plea that they render to the plaintiff the sum of Eighteen Thousand Dollars (\$18,000.00) debt and the sum of Thirty Thousand Dollars (\$30,000) damages, which they owe to and unjustly detain from the plaintiff.

For that whereas the said defendants heretofore, to wit, on or about the fifth day of April, A. D. 1908, at Chicago, in the said Northern District of Illinois, by their certain writing obligatory, bearing date of that day, sealed with their seals, and now shown to the Court here, obligated themselves jointly and severally to be held and firmly bound unto the plaintiff in the penal sum of Eighteen Thousand Dollars (\$18,000.00), which said writing obligatory was and is subject to a certain condition thereunder written whereby the condition of the said writing obligatory was and is declared to be such that if the said defendant the Congress Construction Company shall well and truly and in a satisfactory manner fulfill and perform the stipulations of a certain contract annexed to said writing obligatory and entered into with the Chief of the Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy of the United States, for and in behalf of the plaintiff, and shall conform in respects to said contract as it then existed or may thereafter be modified by the parties thereto, according to its terms and to the plans and specifications attached thereto and forming a part thereof, and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and shall promptly make payments to all persons supplying it, the said Congress Construction Company, with labor, and materials in the prosecution of the work provided for in the aforesaid contract, then the said obligation shall be void and of no effect, otherwise to remain in full force and virtue as by the said writing obligatory and the said conditions thereof, copy of which is attached hereto and made a part hereof, marked "Exhibit A", will appear; that under and by virtue of said contract attached to and made a part of said writing obligatory the said Congress Construction

Company in consideration of the payments therein specified, covenanted and agreed with the said plaintiff by Mordecai T. Endicott, Chief of the Bureau of Yards and Docks of the Navy Department, acting under the direction of the Secretary of the Navy of the United States, to provide, furnish, and deliver at its own risk and expense at the United States Navy Yard at Puget Sound, Bremerton, Washington, all the necessary materials, labor, tools, and appliances for the construction and completion in all respects of a boiler and blacksmith shop building at said Navy Yard, and to construct and complete the same within twelve calendar months from the date of said contract, and in strict accordance with and subject to all the conditions and requirements of the plans and specifica-

tions appended to and forming a part of said contract, for the sum of Eighty-six Thousand Two Hundred and Seventy-six Dollars (\$86,276.00) in the manner, and at the times and in the amounts specified and set forth in said contract; that thereafter by a supplemental agreement by and between the said plaintiff, acting by Wm. M. Smith, acting Chief of the Bureau of Yards and Docks of the Navy Department of the United States and acting under the direction of the Secretary of the Navy, and the said defendant, the Congress Construction Company, certain requirements of said original contract were modified, and certain specifications with reference to the kind of material to be used by said Congress Construction Company in the construction of said boiler and blacksmith shop building *was* changed, and it was further agreed by said supplemental agreement that the compensation by said plaintiff to said Congress Construction Company should be reduced by the sum of Four Thousand Six Hundred Seventy-four Dollars and twenty-nine cents (\$4,674.29), but that in all other respects the said original contract and agreement remained unchanged; that said defendants and each of them, jointly and severally, in and by said

11 supplemental agreement, extended all obligations of said writing obligatory or bond to cover the changes provided in said supplemental agreement, that said writing obligatory, executed by said defendants, was thereafter duly accepted by said plaintiff, and that thereafter the said Congress Construction Company began the prosecution of the said work of constructing the said boiler and blacksmith shop building at said Navy Yard; and thereafter in the prosecution of said work employed a large number of individuals, firms and corporations to furnish labor and materials for the prosecution of said work and construction of said boiler and blacksmith shop building at the said Navy Yard; and thereafter the construction of said boiler and blacksmith shop building at said Navy Yard was by the said Congress Construction Company completed in all respects according to said contract as thereafter modified, and according to the plans and specifications attached to said contract and forming a part thereof and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and that thereafter said work was accepted by the plaintiff, and thereafter full payment was made by the said plaintiff to the said Congress Construction Company of the amount specified in said contract, and modifications thereof; but the plaintiff alleges that the said defendant, Congress Construction Company, did not promptly make payments to all persons supplying it with labor and materials in the prosecution of the work provided for in the said contract, and that there is now due, owing and unpaid from said Congress Construction Company to such persons, firms and corporations furnishing it with labor and materials for the prosecution of said work under said contract a large sum of money, to wit, the sum of Thirty Thousand Dollars (\$30,000.00); and that the said plaintiff is

12 therefore damnified to the amount thereof; of all of which said premises the said defendants afterwards had notice; to the damage of the plaintiff in debt of Eighteen Thousand Dollars

(\$18,000.00) and damages of Thirty Thousand Dollars (\$30,000.00).

For that whereas also, the said Congress Construction Company heretofore, to wit, on or about the 14th day of April, A. D. 1906, entered into a certain contract with the plaintiff by and through Mordecai T. Endicott, Chief of the Bureau of Yards and Docks, Navy Department, acting under the direction of the Secretary of the Navy, whereby it agreed to furnish and deliver at its own risk and expense at the United States Navy Yard, Puget Sound, Bremerton, Washington, all necessary material, labor, tools and appliances for the construction and completion in all respects of a boiler and blacksmith shop building at said Navy Yard and within twelve months from the date of said contract, in strict accordance with and subject to all the conditions and requirements of the plans and specifications appended to and forming a part of said contract, for the sum of Eighty-Six Thousand Two Hundred Seventy-six Dollars (\$86,276.00), and said plaintiff in and by said contract agreed that in consideration of the faithful performance of the said contract by said Congress Construction Company, and the acceptance of the work as satisfactory on the part of the said plaintiff, to pay to the said Congress Construction Company the said sum of Eighty-six Thousand Two Hundred and Seventy-six Dollars (\$86,276.00) within a certain time, as specified in said contract; that thereafter by a certain supplemental agreement between said plaintiff, acting by and through Wm. M. Smith, acting
13 Chief of the Bureau of Yards and Docks of the Navy Department, who was acting under the direction of the Secretary of the Navy, and said Congress Construction Company, certain requirements of said contract were modified, certain changes being made in the specifications attached to said contract and made a part thereof, and the kind of material specified in said original contract was changed and other material of different kind or character substituted therefor, and that in and by said supplemental agreement, the compensation to be paid to said Congress Construction Company was reduced by the sum of Four Thousand Six Hundred Seventy-four Dollars and Twenty-nine Cents (\$4,674.29), but that in all other respects the said contract remained unchanged and unaltered; that for the faithful performance of all of the terms and obligations of said contract, as so modified, and as security for the prompt payment by said Congress Construction Company to all persons, firms or corporations for labor and material used in the prosecution of said work, as provided for in the aforesaid contract as so modified, the said defendants on or about, to-wit, the 5th day of April, A. D. 1906, by their certain writing obligatory, sealed with their seal, and now shown to the Court here, jointly and severally acknowledged themselves to be firmly bound unto the plaintiff in the penal sum of Eighteen Thousand Dollars (\$18,000.00), to be paid to the plaintiff, which said writing obligatory was and is subject to a certain condition thereunder written, whereby the condition of said writing obligatory was and is declared to be such that if the said defendant, Congress Construction Company, should well

and truly and in a satisfactory manner faithfully perform the stipulations of the said contract above mentioned and annexed to said writing obligatory, and shall conform in all respects to said contract, as it originally existed or as it may thereafter be modified by said parties according to its terms, and should carry on and construct said work according to the plans and specifications attached to said contract and forming a part thereof, and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and shall promptly make payments to all persons supplying it, the said defendant, Congress Construction Company, with labor and material in the prosecution of the work provided for in the aforesaid contract, then the said obligation is to be void and of no effect, otherwise to remain in full force and virtue, as by said writing obligatory and the said conditions thereof, copy of which is hereto attached and made a part hereof, and marked "Exhibit A" will appear; and the plaintiff avers that thereafter the said defendant, Congress Construction Company, entered upon the work of constructing said boiler and blacksmith shop building at said Navy Yards, and thereafter and in the month of July, 1907, completed the work to the satisfaction of the Chief of the Bureau of Yards and Docks of the Navy Department of the United States, and said work as so completed was thereafter accepted by said plaintiff as satisfactory. Plaintiff further avers that in the prosecution of the said work the said defendant, Congress Construction Company, entered into contracts with certain individuals, persons, firms or corporations for the furnishing to it of labor and materials in the prosecution of said work and in the construction of said boiler and blacksmith shop building at said Navy Yards, and that the said individuals, persons, firms or corporations did furnish to the said defendant, Congress Construction Company, a large amount 14½ of labor and materials, which were necessary and were used by the said Congress Construction Company in the prosecution of said work and in the construction of said boiler and blacksmith shop building, in pursuance of its said contract with the plaintiff, and the plaintiff further avers that said Congress Construction Company did not and has not promptly made payments to all persons, firms or corporations supplying it with labor and materials in the prosecution of the work provided for in said contract, and that there is now due, owing and unpaid from the said Congress Construction Company to a large number of persons, firms or corporations who furnished it labor and materials necessary for the prosecution of said work, a large sum of money, to-wit, the sum of Thirty Thousand Dollars (\$30,000.00), by means of which premises an action has accrued to the plaintiff to demand of the said defendant the said sum, Eighteen Thousand Dollars (\$18,000.00) debt and Thirty Thousand Dollars (\$30,000.00) damages, above demanded.

For that whereas also the said defendants heretofore, to-wit, on or about the fifth day of April, A. D. 1906, at Chicago in the said Northern District of Illinois, by their certain writing obligatory, sealed with their seal and now shown to the Court here, obligated

themselves, jointly and severally to be held and firmly bound unto the plaintiff in the penal sum of Eighteen Thousand Dollars (\$18,000.00) to be paid to the plaintiff; which said writing obligatory was and is subject to a certain condition thereunder written whereby the condition of the said writing obligatory was and is declared to be such that if the said defendant, Congress Construc-

tion Company, shall well and truly and in a satisfactory
15 manner fulfill and perform the stipulations of a certain contract annexed to said bond entered into with the Chief of the Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy, for and on behalf of the plaintiff, and shall conform in all respects to said contract as it then existed or may thereafter be modified by the parties thereto, according to its terms and to the plans and specifications attached thereto and forming a part thereof, and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and shall promptly make payment to all persons supplying it, the said Congress Construction Company, with labor and materials in the prosecution of the work provided for in the aforesaid contract, then the said obligation shall be of no effect, otherwise to remain in full force and virtue as by said writing obligatory and said condition thereof, a copy of which is attached hereto and made a part hereof, marked "Exhibit A," will more fully appear; that under and by virtue of said contract attached to and made a part of said writing obligatory the said Congress Construction Company in consideration of the payments specified, therein covenanted and agreed with the said plaintiff by Mordecai T. Endicott, Chief of the Bureau of Yards and Docks of the Navy Department acting under the direction of the Secretary of the Navy, to provide, furnish and deliver at its own risk and expense, at the United States Navy Yard at Puget Sound, Bremerton, Washington, all the necessary materials, labor, tool and appliances for the construction and completion in all respects of a boiler and blacksmith shop building at said Navy Yard, and to construct and complete the same within twelve calendar months from the date of said contract, and in strict accordance with and subject to all the conditions and requirements of the plans and specifications appended to and forming a part of said contract, for the sum of Eighty-six Thou-

sand Two Hundred and Seventy-six Dollars (\$86,276.00),
16 to be paid in the manner, and at the times and in the amounts specified and set forth in said contract; that by a certain supplemental agreement thereafter entered into by and between the plaintiff, by Wm. M. Smith, acting Chief of the Bureau of Yards and Docks, who was acting under the direction of the Secretary of the Navy of the United States, and the said defendant, Congress Construction Company, certain changes in the specifications of the material provided for in said original contract, were made, the kinds of material in certain respects were then and there modified, one kind being substituted for another, and in and by said supplemental agreement, it was also provided and agreed that the compensation to be paid to the said Congress Construction Company by said plaintiff,

as provided for in said original contract, should be reduced by the sum of Four Thousand Six Hundred Seventy-four and 29/100 Dollars (\$4,674.29), that said supplemental agreement was accepted, signed and sealed by the said defendants, S. N. Crowen and Peter F. Reynolds, for the purpose as stated in said agreement of extending the obligations of said writing obligatory to cover the changes provided for in such supplemental agreement; that the said writing obligatory, bearing date the fifth day of April, A. D. 1906, and so executed by the said defendants was thereafter duly accepted by the said plaintiff, and that thereafter the said Congress Construction Company began the prosecution of the said work of constructing the said boiler and blacksmith shop building at said Navy Yard; and thereafter in the prosecution of said work employed a large number of individuals, firms and corporations to furnish labor and materials for the prosecution of said work and construction of said boiler and blacksmith shop building at the said Navy Yard; that there-

17 after the construction of said boiler and blacksmith shop building at said Navy Yard was by the said Congress Construction Company completed and accepted by the said plaintiff in the month of July, 1907; as in all respects according to said contract as it originally existed and as thereafter modified and according to the terms and according to the plans and specifications attached to said contract and forming a part thereof and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and that thereafter full payment was made by the said plaintiff to the said Congress Construction Company of the amount specified in said contract; that in the prosecution of said work under said contract as so modified, the said Congress Construction Company entered into contract with a large number of persons, firms and corporations for the furnishing by such persons, firms and corporations to the said Congress Construction Company of a large amount of labor and material necessary to be used by said Congress Construction Company in the prosecution of said work and same was so used by said Congress Construction Company in the prosecution of said work and in carrying on and completing said contract between said plaintiff and it, the said Congress Construction Company, but plaintiff alleges and avers that the said Congress Construction Company did not promptly make payments to all persons supplying it with labor and material in the prosecution of the work provided for in the aforesaid contract, and did not make full payments to all persons supplying and furnishing it with said labor and material; that in the prosecution of said work it entered into contracts with the following named persons, firms, individuals and corporations for the furnishing of labor and materials in the prosecution of said work; that they did furnish labor and materials to the said Congress Construction Com-

18 pany in the prosecution of its said work under said contract, and said labor and materials were used in and about the construction of said boiler and blacksmith shop building, and in the prosecution of said work by said Congress Construction Company, and that the residence of each and every persons, firms,

or corporations, and the amounts now due, owing and unpaid to them and each of them, are set opposite their respective names, to-wit:

Seattle Paint Company (a corporation) Seattle, Wash..	430.38
Denny-Renton Clay & Coal Co. (a corporation), Seattle, Wash.	361.45
Pan-American Bridge Company (a corporation) New Castle, Ind.	14,124.68
Hoffins Steel & Equipment Company (a corporation), Seattle, Wash.	910.28
Port Orchard Route (a corporation) Seattle, Wash.....	193.55
Martin Gravel Company, Seattle, Wash.....	370.10
August Wiefenbach, doing business under the trade name of Seattle Cornice Works, Seattle, Wash.....	3,958.42
International Fence & Fireproofing Co. (a corporation) Columbus, Ohio	733.45
Western Hardware & Metal Company (a corporation) Seattle, Wash.....	316.00
Vulcan Iron Works (a corporation) Seattle, Wash.....	148.47
F. T. Crowe & Co. (a corporation) Seattle, Wash.....	599.28
Swabacher Mfg. Co. (a corporation) Seattle, Wash.....	1,128.01
Robinson Mfg. Co. (a corporation) Everett, Wash.....	2,109.00
Galbreath, Bacon & Co., Seattle, Wash.....	22.90

That there is now due to the said individuals, firms and corporations above named from the said Congress Construction Company the sum of Twenty-five Thousand Four Hundred Five Dollars and ninety-seven Cents (\$25,405.97); by means of which premises an action has accrued to the United States of America to demand of said Congress Construction Company, S. N. Crowen and
 19 Peter F. Reynolds, the sum of Eighteen Thousand Dollars (\$18,000.00) debt and damages of Thirty Thousand Dollars (\$30,000.00).

Yet, though often requested, said defendants Congress Construction Company, S. N. Crowen and Peter F. Reynolds have not paid the said sum of money or any part thereof, but refuse so to do; to the damage of the plaintiff of Eighteen Thousand Dollars (\$18,000.00) debt and Thirty Thousand Dollars (\$30,000.00) damages, and therefore the said plaintiff brings suit.

EDWIN W. SIMS,
*United States District Attorney in and for the
 Northern District of Illinois.*

"Bond.

(NOTE.—This form to be used when Bond is not given by a corporation authorized to act as sole surety.)

Know all men by these presents, That we, Congress Construction Co., principal, and S. N. Crowen, of Chicago, Ill., Peter F. Reynolds,

of Chicago, Ill., as sureties, are held and firmly bound unto the United States of America in the penal sum of Eighteen Thousand Dollars (\$18,000.00) Dollars, to be paid to the said United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, assigns, and representatives, jointly and severally, by these presents.

Signed, sealed with our seals, and dated this fifth day of April, A. D. 1906.

Conditions.

- 1 The condition of the above bond is such, that if the said above bounden principal
- 2 Congress Construction Co.
- 3 *his or* their heirs, successors, executors, or administrators shall well and truly, and in a
- 4 satisfactory manner, fulfill and perform the stipulations of the contract hereto annexed,
- 5 entered into with the Chief of the Bureau of Yards and Docks, acting under the direction
- 6 of the Secretary of the Navy, for and in behalf of the United States and shall conform in
- 7 all respects to said contract, as it now exists or may be modified by the parties thereto,
- 8 according to its terms, and to the plans and specifications attached thereto and forming a
- 9 part thereof, and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and
- 10 shall promptly make payments to all persons supplying *him or* them labor and materials in
- 21 11 the prosecution of the work provided for in the aforesaid contract then this obligation to
- 12 be void and of no effect; otherwise to remain in full force and virtue.

CONGRESS CONSTRUCTION CO.,	[SEAL.]	[L. S.]
Per FRED A. BRITTON, <i>Sec'y.</i>		[L. S.]
S. N. CROWEN.	[SEAL.]	[L. S.]
PETER F. REYNOLDS.	[SEAL.]	[L. S.]
— — —		[L. S.]

Signed, sealed and delivered in presence of—

— — —
— — —

Justification of the Sureties.

STATE OF ILLINOIS,
County of Cook, ss:

I, S. N. Crowen, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am pecuniarily worth the sum of Twenty Thousand (\$20000.00) dollars over and above all my debts and liabilities.

S. N. CROWEN.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.] [SEAL.]
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

I, Peter F. Reynolds, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am pecuniarily worth the sum of Twenty Thousand dollars (\$20000.00) over and above all my debts and liabilities.

PETER F. REYNOLDS.

*Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.] [SEAL.]
Notary Public.

22

*_____,
†_____.

Certificate.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Mark A. Foote, United States Commissioner for said district, do hereby certify that S. N. Crowen and Peter F. Reynolds, the sureties above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

[SEAL.]

MARK A. FOOTE,
U. S. Commissioner, N. D. Ill. (Official Title).

*The Justification of the sureties to be sworn to before a notary public or other officer authorized to administer oaths.

†The Certificate to be signed by any United States Officer."

(Endorsed:) Filed June 1, 1908, H. S. Stoddard, Clerk.

23 And on to-wit the eighteenth day of June, 1908, there was filed in the clerk's office of said Court, in said entitled cause the certain affidavit of Jesse R. Long, in words and figures following to-wit:

24

Affidavit of Jesse R. Long.

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of the United States for the Northern District
of Illinois, Eastern Division.

UNITED STATES OF AMERICA

vs.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN,
and PETER F. REYNOLDS.

Debt, \$18,000.00.
Damages, \$30,000.00.

Jesse R. Long, being duly sworn, deposes and says that he is attorney for certain creditors of the defendant, the Congress Construction Company, for labor and material furnished to the said Congress Construction Company and used by it in the prosecution of the work in constructing a boiler and blacksmith shop building in the United States Navy Yard at Puget Sound, Bremerton, in the State of Washington; that he has heretofore examined the books and records of the defendant, Congress Construction Company, and has also examined and conferred with the officers of the said defendant, Congress Construction Company, and has learned therefrom who are creditors of the said Congress Construction Company who furnished labor and material to the said Congress Construction Company in the prosecution of its said work under said contract.

Affiant further says that the following named persons, firms or corporations and their addresses or places of conducting business set opposite their names to wit:

- 25 Seattle Paint Company (a corporation), Seattle, Wash.
 Denny-Renton Clay & Coal Co. (a corporation), Seattle,
Wash.
 Pan-American Bridge Company (a corporation), New Castle, Ind.
 Hoffins Steel & Equipment Company (a corporation), Seattle,
Wash.
 Port Orchard Route (a corporation), Seattle, Wash.
 Martin Gravel Company, Seattle, Wash.
 August Wiefenbach, doing business under the trade name of
Seattle Cornice Works, Seattle, Wash.
 International Fence & Fireproofing Co. (a corporation), Colum-
bus, Ohio.
 Western Hardware & Metal Company (a corporation) Seattle,
Wash.
 Vulcan Iron Works (a corporation) Seattle, Wash.
 F. T. Crowe & Co. (a corporation) Seattle, Wash.
 Swabacher Mfg. Co. (a corporation) Seattle, Wash.

Robinson Mfg. Co. (a corporation) Everett, Wash.
Galbreath, Bacon & Co., Seattle, Wash.—

are all of the known creditors of the said defendant, Congress Construction Company, who furnished and supplied the said Congress Construction Company with labor and material in the prosecution of the work for the Congress Construction Company, provided for in said contract between plaintiff and defendant, whereby the defendant was to and did construct a boiler and blacksmith shop building at the United States Navy Yard, Puget Sound, Bremerton, Washington.

Affiant further says that there is published at Bremerton in the said State of Washington, a weekly newspaper of general circulation, known as the Bremerton News, and that the said town of Bremerton, Washington, was and is the town in the said state adjoining the Navy Yard, which is a United States naval reserve, where the said contract between the defendant, Congress Construction Company and the plaintiff was performed.

26 And further affiant sayeth not.

JESSE R. LONG.

Subscribed and sworn to before me this 13th day of June, A. D. 1908.

[SEAL.]

FREDERIC H. BENDEL,
Notary Public.

(Endorsed:) Filed June 18, 1908. H. S. Stoddard, Clerk.

27 And on to-wit: the eighteenth day of June, 1908, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of June 18, 1908, as to Mailing Notice.

29114.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY, a Corporation, S. N. CROWEN,
and PETER F. REYNOLDS.

This cause coming on to be heard upon the motion of the United States District Attorney, for an order directing a method of serving notice upon the known creditors of the defendant Congress Construction Company, and upon the affidavit of Jesse R. Long, filed in this cause, the Court, after having heard the arguments of the District Attorney in support of said motion, has ordered that a notice in the following form:

"Public Notice is hereby given to all persons, firms, or corporations, who furnished the said Congress Construction Company labor or material, or both, in the prosecution of its work under its contract with the United States for the construction of a boiler and blacksmith shop building at the United States Navy Yard at 28 Puget Sound, Bremerton, Washington, and to all other persons interested, that the above named plaintiff, United States of America, has heretofore filed suit in the United States Circuit Court, Northern District, Eastern Division, at Chicago, Illinois, against the said defendant, Congress Construction Company and S. N. Crowen and Peter F. Reynolds, sureties on the bond given by the said Congress Construction Company, in connection with its contract with the United States of America for the construction of a boiler and blacksmith shop building at the United States Navy Yard at Puget Sound, Bremerton, Washington.

You are further notified that in Court, under an act of Congress of the United States of February 24th, 1905, c. 778, (33 Stat. 811), you will have the right to intervene, until after the first day of October term of said court, to-wit: the first Monday in October, 1908, in said cause and assert any claim that you may have against the Congress Construction Company for labor and material furnished it in the construction of the work under said contract, and

You are further notified that unless you do appear and intervene in said cause and set up your claim, if any, on or before the time, above mentioned, you will be forever barred from sharing in any manner in said proceedings.

E. W. SIMS,

*United States District Attorney in and for
the Northern District of Illinois."*

29 be mailed to all of the known creditors of the said Congress Construction Company, who furnished labor and material to the said Congress Construction Company for the prosecution of its work in the construction of a boiler and blacksmith shop building at the United States Navy Yard at Puget Sound, Bremerton, Washington, as follows to-wit:

Seattle Paint Company (a corporation) Seattle, Wash.

Denny-Renton Clay & Coal Co. (a corporation) Seattle, Wash.

Pan-American Bridge Company (a corporation) New Castle, Ind.

Hoffins Steel & Equipment Company (a corporation) Seattle, Wash.

Port Orchard Route (a corporation) Seattle, Wash.

Martin Gravel Company, Seattle, Wash.

August Wiefenbach, doing business under the trade name of Seattle Cornice Works, Seattle, Wash.

International Fence & Fireproofing Co. (a corporation), Columbus, Ohio.

Western Hardware & Metal Company (a corporation) Seattle, Wash.

Vulcan Iron Works (a corporation) Seattle, Wash.

F. T. Crowe & Co. (a corporation) Seattle, Wash.
Swabacher Mfg. Co. (a corporation) Seattle, Wash.
Robinson Mfg. Co. (a corporation) Everett, Wash.
Galbreath Bacon & Co., Seattle, Wash.

and that said notice be so mailed by the clerk of this court at least three (3) months prior to the first day of the October term of this court, and that said clerk make due affidavit thereof.

It is further ordered that said notice be published at least once a week for three (3) successive weeks in length in a newspaper of general circulation, published in the town of Bremerton, State of Washington, and that the last of said publications be at least three months prior to the first day of the October term of this court, and that a certificate of said publisher shall be sufficient proof of said publication.

30 And afterwards to-wit: on the twenty second day of June, 1908, there was filed in the clerk's office of said court in said entitled cause a certain Affidavit of Mailing Notice in words and figures following to-wit:

Affidavit of Mailing Notice.

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of the United States for the Northern District of Illinois.

No. 29114.

UNITED STATES OF AMERICA
vs.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN,
and PETER F. REYNOLDS.

Debt, \$18,000.00.
Damages, \$30,000.00.

Henry S. Stoddard, being duly sworn, deposes and says, that he is the clerk of the above named court, and that on the 22nd day of June, A. D. 1908, he sent by mail a notice, a copy of which is hereto attached marked "Exhibit A," to the following named persons and corporations and addressed as follows:

One copy to Seattle Paint Company, Seattle, Wash.
One copy to Denny-Renton Clay & Coal Co., Seattle, Wash.,
One copy to Pan-American Bridge Company, New Castle, Ind.,
One copy to Hoffins Steel & Equipment Company, Seattle, Wash.,
One copy to Port Orchard Route, Seattle, Wash.,
One copy to Martin Gravel Company, Seattle, Wash.,

One copy to August Wieffenbach, as Seattle Cornice Works, Seattle, Wash.

One copy to International Fence & Fireproofing Co., Columbus, Ohio.

One copy to Western Hardware & Metal Company, Seattle, Wash.,

One copy to Vulcan Iron Works, Seattle, Wash.,

One copy to F. T. Crowe & Co., Seattle, Wash.,

One copy to Swabacher Mfg. Co., Seattle, Wash.,

One copy to Robinson Mfg. Co., Everett, Wash.,

One copy to Galbreath Bacon & Co., Seattle, Wash.

H. S. STODDARD, *Clerk.*

31

Subscribed and sworn to before me, this 22nd day of June, A. D. 1908.

CHAS. A. BUELL,

Commissioner, Northern Dist. of Illinois.

EXHIBIT A.

STATE OF ILLINOIS,

County of Cook, ss:

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

#29114.

UNITED STATES OF AMERICA

vs.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN, and PETER F. REYNOLDS.

Debt, \$18,000.00.

Damages, \$30,000.00.

Public notice is hereby given to all persons, firms, or corporations, who furnished the said Congress Construction Company labor or material, or both, in the prosecution of its work under its contract with the United States for the construction of a boiler and blacksmith shop building at the United States Navy Yard at Puget

32 Sound, Bremerton, Washington, and to all other persons interested, that the above named plaintiff, United States of America, has heretofore filed suit in the United States Circuit Court, Northern District, Eastern Division, at Chicago, Illinois, against the said defendant, Congress Construction Company and S. N. Crowen and Peter F. Reynolds, sureties on the bond given by the said Congress Construction Company, in connection with its contract with the United States of America for the construction of a boiler and blacksmith shop building at the United States Navy Yard at Puget Sound, Bremerton, Washington.

You are further notified that in Court, under an act of Congress of the United States of February 24th, 1905, c778, (33 Stat. 811), you will have the right to intervene, until after the first day of October term of said court, to-wit: the first Monday in October, 1908, in said cause and assert any claim that you may have against the Congress Construction Company for labor and material furnished it in the construction of the work under said contract, and

You are further notified that unless you do appear and intervene in said cause and set up your claim, if any, on or before the time, above mentioned, you will be forever barred from sharing in any manner in said proceedings.

E. W. SIMS,
*United States District Attorney in and for
the Northern District of Illinois.*

(Endorsed:) Filed June 22, 1908. H. S. Stoddard, Clerk.

33 And on to-wit: the eighth day of July, 1908, come S. N. Crowen and entered his special appearance and filed his plea in said entitled cause. Which said appearance and plea are respectively in words and figures following to-wit:

34 *Special Appearance of S. N. Crowen.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 29114.

UNITED STATES OF AMERICA
vs.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN,
and PETER F. REYNOLDS.

And now comes the defendant, S. N. Crowen, and enters his appearance especially for the purpose of contesting the jurisdiction of this Court.

ALLEN G. MILLS,
H. ERSKINE CAMPBELL,
Attorneys for Defendant S. N. Crowen.

35

Plea.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 29114.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN,
and PETER F. REYNOLDS.

And the defendant, S. N. Crowen, in his own person comes and defends, etc., and says that the said writing obligatory in said declaration mentioned was and is subject to a certain condition thereunder written, whereby the condition of the said writing obligatory was and is declared to be such that if the said defendant the Congress Construction Company shall well and truly and in a satisfactory manner fulfill and perform the stipulations of a certain contract annexed to said writing obligatory and entered into with the Chief of the Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy of the United States, for and in behalf of the plaintiff, and shall promptly make payments to all persons supplying it, the said Congress Construction Company, with labor and materials in the prosecution of the work provided for in the aforesaid contract; that under and by virtue of said contract the said

36 Congress Construction Company agreed to provide, furnish and deliver at its own risk and expense at the United States Navy Yard at Puget Sound, Bremerton, Washington, all the necessary materials, labor, tools and appliances for the construction and completion in all respects of a boiler and blacksmith shop building at said Navy Yard, and to construct and complete the same within twelve calendar months from the date of said contract.

And the defendant, S. N. Crowen, further says that at the time said writing obligatory in said declaration mentioned was executed, there was and still is in force a certain public statute enacted by Congress on the twenty-fourth day of February, Nineteen Hundred and Five, in words and figures as follows:

"That hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building, or public work, shall be required, before commencing such work, to execute the usual penal bond, with good and sufficient sureties, with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract; and any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have

the right to intervene and be made a party to any action instituted by the United States on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the United States. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the

United States, the remainder shall be distributed pro rata
37 among said interveners. If no suit should be brought by

the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the Department under the direction of which said work has been prosecuted that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of the United States in the circuit court of the United States in the district in which said contract was to be performed and executed, irrespective of the amount in controversy in such suit, and not elsewhere, for his or their use and benefit, against said contractor and his sureties, and to prosecute the same to final judgment and execution: Provided, That where suit is instituted by any of such creditors on the bond of the contractor it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later: And provided further, That where suit is so instituted by a creditor or by creditors, only one action shall be brought, and any creditor may file his claim in such action and be made party thereto within one year from the completion of the work under said contract, and not later. If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the
sureties' liability, to wit, the penalty named in the bond, less

38 any amount which said surety may have had to pay to the United States by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability; Provided further, That in all suits instituted under the provisions of this Act such personal notice of the pendency of such suits, informing them of their right to intervene as the court may order, shall be given to all known creditors, and in addition thereto notice of publication in some newspaper of general circulation, published in the State or town where the contract is being performed, for at least three successive weeks, the last publication to be at least three months before the time limited therefor."

And the defendant, S. N. Crowen, further says that before and at the time of the commencement of the said action of the said United

States of America, the Circuit Court of the United States for the Western District of Washington, Northern Division in the Ninth Circuit, has had and still has exclusive jurisdiction of said action, and not the Circuit Court of the United States of America for the Northern District of Illinois, Eastern Division; and that he, the said S. N. Crowen, was not found or served with process in the said action issued out of the Circuit Court of the United States for the Western District of Washington, Northern Division in the Ninth Circuit, but was found and served with process in said action issued out of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division; And this he is ready to verify; wherefore he prays judgment if the Court here will take cognizance of the action aforesaid.

S. N. CROWEN.

ALLEN G. MILLS,

H. ERSKINE CAMPBELL,

Attorneys for Defendant S. N. Crowen.

(Endorsed:) Filed July 8, 1908. H. S. Stoddard, Clerk.

39 And on to-wit: the ninth day of July, 1908, come Peter F. Reynolds, by his attorney, and filed in the clerk's office of said court in said entitled cause his certain Plea in words and figures following to-wit:

Plea of Peter F. Reynolds.

UNITED STATES OF AMERICA,

Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States.

PETER F. REYNOLDS et al., Defendants,
ats.

UNITED STATES OF AMERICA, Plaintiff.

And the said Peter F. Reynolds, defendant, in his own proper person comes and says that this court ought not to have or take further cognizance of the action aforesaid, because he says that the said supposed causes of action, and each and every of them (if any such have accrued to the said plaintiff), accrued to the said plaintiff out of the jurisdiction of this court, that is to say at Bremerton, in the Western District of Washington and not at Chicago, in the Northern District of Illinois, or elsewhere within the jurisdiction of this court; and this the said defendant is ready to verify, wherefore he prays judgment whether this court can or will take further cognizance of the action aforesaid.

PETER F. REYNOLDS.

WORTH E. CAYLOR,

Attorney for Peter F. Reynolds, Defendant.

40 STATE OF ILLINOIS,
County of Cook, ss:

Peter F. Reynolds, being duly sworn, deposes and says that he is the same Peter F. Reynolds who signed the foregoing plea and that the said plea is true in substance and fact.

PETER F. REYNOLDS.

Subscribed and sworn to before me this 8th day of July, A. D. 1908.

[SEAL.]

WILLIAM G. WISE,
Notary Public.

(Endorsed:) Filed July 9, 1908. H. S. Stoddard, Clerk.

41 And on to-wit: the thirteenth day of July, 1908, come Peter F. Reynolds, and entered his special appearance in said entitled cause in words and figures following to-wit:

Special Appearance of Peter F. Reynolds.

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of the United States, July Term, A. D. 1908.

General No. 29114.

UNITED STATES OF AMERICA
VS.
CONGRESS CONSTRUCTION COMPANY et al.

And now comes the defendant, Peter F. Reynolds, and enters his appearance especially for the purpose of contesting the jurisdiction of the court in the matter of the application of the Pan-American Bridge Company, Seattle Paint Company, Denny-Renton Clay and Coal Company, Martin Gravel Company, Port Orchard Route, Hofius Steel and Equipment Company, International Fence and Fireproofing Company, August Wiefenbach, doing business under the name of Seattle Cornice Works, Robinson Manufacturing Co., a corporation, F. T. Crowe & Co., and Schwabacker Hardware Company for leave to intervene in the above entitled cause, and objects to said parties being permitted to intervene and become parties to said suit and to have their rights and claims adjudicated and judgment rendered thereon.

WORTH E. CAYLOR,
Attorney for said Defendant.

(Endorsed:) Filed July 13, 1908, H. S. Stoddard, Clerk.

42 And on to-wit: the thirteenth day of July, 1908, come S. N. Crowen, and entered his special appearance in said entitled cause in words and figures following to-wit:

Special Appearance of S. N. Crowen.

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of the United States, July Term, A. D. 1908.

General No. 29114.

UNITED STATES OF AMERICA
vs.
CONGRESS CONSTRUCTION COMPANY et al.

And now comes the defendant, S. N. Crowen, and enters his appearance especially for the purpose of contesting the jurisdiction of the court in the matter of the application of the Pan-American Bridge Company, Seattle Paint Company, Denny-Renton Clay and Coal Company, Martin Gravel Company, Port Orchard Route, Hofius Steel and Equipment Company, International Fence and Fireproofing Company, August Wiefenbach, doing business under the name of Seattle Cornice Works, Robinson Manufacturing Co., a corporation, F. T. Crowe & Co., and Schwabacker Hardware Company for leave to intervene in the above entitled cause, and objects to said parties being permitted to intervene and become parties to said suit and to have their rights and claims adjudicated and judgment rendered thereon.

ALLEN G. MILLS,
H. ERSKINE CAMPBELL,
Attorneys for Defendant.

(Endorsed:) Filed July 13, 1908, H. S. Stoddard, Clerk.

43 And on to-wit: the eighteenth day of September, 1908, come the plaintiff in said entitled cause by its attorney and filed in the clerk's office of said court its certain Demurrer to the Plea of Peter F. Reynolds in words and figures following to-wit:

Demurrer to Plea of Peter F. Reynolds.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States.

No. 29114.

UNITED STATES OF AMERICA, Plaintiff,
vs.
CONGRESS CONSTRUCTION COMPANY et al., Defendants.

And the plaintiff says, that the said plea of the defendant, Peter F. Reynolds, and matters therein contained, in manner and form as the same are above pleaded, are not sufficient in law to quash the said writ, and that it, the plaintiff, is not bound by law to answer the same; and this it is ready to verify.

Wherefore, for want of a sufficient plea in this behalf, the plaintiff prays judgment, and that the defendant, Peter F. Reynolds may answer further to the said declaration, etc.

EDWIN W. SIMS,
*United States District Attorney in and for
the Northern District of Illinois.*

(Endorsed:) Filed Sep. 18, 1908, H. S. Stoddard, Clerk.

44 And on to-wit: the eighteenth day of September, 1908, come the plaintiff in said entitled cause by its attorney and filed in the clerk's office of said court its certain Demurrer to the Plea of S. N. Crowen, in words and figures following to-wit:

Demurrer to Plea of S. N. Crowen.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States.

No. 29114.

UNITED STATES OF AMERICA, Plaintiff,
vs.
CONGRESS CONSTRUCTION COMPANY et al., Defendants.

And the plaintiff says, that the said plea of the defendant, S. N. Crowen, and matters therein contained, in manner and form as the same are above pleaded, are not sufficient in law to quash the said writ, and that it, the plaintiff, is not bound by law to answer the same; and this it is ready to verify.

Wherefore, for want of a sufficient plea in this behalf, the plaintiff prays judgment, and that the defendant, S. N. Crowen, may answer further to the said declaration, etc.

EDWIN W. SIMS,
*United States District Attorney in and for
 the Northern District of Illinois.*

(Endorsed:) Filed Sep. 18, 1908, H. S. Stoddard, Clerk.

45 And on to-wit: the twenty-fifth day of May, 1909, being one of the days of the regular December term of said Court, 1908, in the record of proceedings thereof, in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of May 25, 1909—Leave Given to File Affidavit of Publication nunc pro tunc, etc.

29114.

UNITED STATES OF AMERICA
 vs.

CONGRESS CONSTRUCTION COMPANY, S. N. CROWEN, and PETER F. REYNOLDS.

On motion of Intervenor and upon notice filed, leave is hereby given to file Affidavit of Publication to claimants *nunc pro tunc* as of August first, 1908.

46 And on to-wit: the twenty-fifth day of May, 1909, there was filed in the clerk's office of said Court in said entitled cause *nunc pro tunc* as of August first, 1908, a certain affidavit of publication in words and figures following to-wit:

47 *Affidavit of Publication.*

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 29114.

UNITED STATES OF AMERICA
 vs.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN
 and PETER F. REYNOLDS.

Debt, \$18,000.00.
 Damages, \$30,000.00.

Public notice is hereby given to all persons, firms or corporations, who furnished the said Congress Construction Company labor or ma-

terial, or both, in the prosecution of its work under its contract with the United States for the construction of a boiler and blacksmith shop building at the United States Navy Yard at Puget Sound, Bremerton, Washington, and to all other persons interested, that the above named plaintiff, United States of America, has heretofore filed suit in the United States Circuit Court, Northern District, Eastern Division, at Chicago, Illinois, against the said defendant, Congress Construction Company and S. N. Crowen and Peter F. Reynolds, sureties on the bond given by the said Congress Construction Company in connection with its contract with the United States of America for the construction of a boiler and blacksmith shop building at the United States Navy Yard at Puget Sound, Bremerton, Washington.

You are further notified that in Court, under an act of Congress of the United States of February 24th, 1905, c. 778 (33 Stat. 811)

48 you will have the right to intervene until after the first day of October term of said Court, to-wit the first Monday in October, 1908, in said cause and assert any claim that you may have against the Congress Construction Company for labor and material furnished it in the construction of the work under said contract, and

You are further notified that unless you do appear and intervene in said cause and set up your claim, if any, on or before the time above mentioned, you will be forever barred from sharing in any manner in said proceedings.

E. W. SIMS,

*United States District Attorney in and for the
Northern District of Illinois.*

49

Affidavit of Publication.

STATE OF WASHINGTON,

County of Kitsap, ss:

Carl Jensen being first duly sworn, upon his oath deposes and says: That he is now and during all the time covered by the dates of publication of annexed notice mentioned in this affidavit was foreman of The Bremerton News, a weekly newspaper, which was during all the time aforesaid, printed and published regularly on Saturday of each and every week at Bremerton, in Kitsap County, in the State of Washington, and regularly distributed to its subscribers; that said newspaper is now and during all of said time was of general circulation in said County and State; that the Notice, United States vs. Congress Construction Company, a copy of which is hereto annexed and made a part of this affidavit, was published in said newspaper for the period of three successive weeks (three publications) commencing on the 27th day of June A. D., 1908, and ending on the 11th day of July A. D., 1908; that said annexed copy of said Notice is a true copy thereof as it was published in the regular and entire issue of said newspaper for the period aforesaid.

CARL JENSEN.

Subscribed and sworn to before me this 15th day of May A. D., 1909.

[SEAL.]

EDGAR L. GALE,
*Notary Public in and for the State of
Washington, Residing at Bremerton.*

(Endorsed:) Filed May 25, 1909, Nunc pro tunc as of August 1, 1908, H. S. Stoddard, Clerk.

50 And to-wit: on the eighth day of July, 1908, being one of the days of the regular July term of said Court, 1908, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of July 8, 1908—Leave Given [Western Hardware & Metal Company to Intervene.

29114.

UNITED STATES OF AMERICA

vs.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN
and PETER F. REYNOLDS.

Ordered that the Western Hardware & Metal Co. be given leave to intervene in the above entitled cause, and that the petition of said Western Hardware & Metal Co., be filed herein.

51 And on to-wit: the eighth day of July, 1908, come the Western Hardware & Metal Company, a corporation, by its attorney and filed in the clerk's office of said court in said entitled cause its certain Intervening Petition in words and figures following to-wit:

Intervening Petition of Western Hardware & Metal Company, a Corporation.

STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 29114.

UNITED STATES OF AMERICA
vs.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN
and PETER F. REYNOLDS.

Debt, \$18,000.
Damages, \$30,000.00.

Petition of Western Hardware & Metal Co., a Corporation, for Leave
to Intervene in Above Cause.

Your Petitioner, the Western Hardware & Metal Company a corporation, organized under the laws of the State of Washington, and doing business at Seattle, in the State of Washington, aforesaid, respectfully represents unto your Honors, that on the fifth day of April, A. D. 1906, a formal contract was entered into between the United States of America and Congress Construction Company, a corporation, etc., for the construction of a boiler and blacksmith shop building at the United States Navy Yard at Puget Sound, 52 Bremerton, in the State of Washington, and that a penal bond was executed with the Congress Construction Company as principal and S. M. Crowen and Peter F. Reynolds as sureties, by which said contractor bound itself to make payments promptly to all person or persons, supplying it with labor and material in the prosecution of the work, provided for in such contract.

Your petitioner further represents, that after the execution of the contract aforesaid, Rudolph Deutch and Walter J. Koch, trading under the firm name and style of the Washington Ornamental Iron & Wire Works, in the city of Seattle, in the State of Washington, sold and delivered to the said Congress Construction Company, certain goods, wares and merchandise to the value of three hundred and ten dollars (\$310.00), said goods being material to be used by the said contractor, Congress Construction Company in the construction of said boiler and blacksmith shop building in the United States Navy Yard, Puget Sound, Bremerton, State of Washington, and said Congress Construction Company became bound to pay said Deutch and Koch, trading &c. as the Washington &c. Iron Works the said sum of three hundred and ten dollars (\$310.00) as aforesaid; that after the sale and delivery of said goods, the said Rudolph Deutch and Walter J. Koch, trading under the name and style of Wash-

ington Ornamental Iron & Wire Works, assigned and set over to your intervenor the Western Hardware & Metal Company, all its right, claim title, and interest in and to the money due from the said Congress Construction Company to the said Rudolph Deutsch and Walter J. Koch, trading under the firm name and style of Washington Ornamental Iron & Wire Works.

53 Your petitioner further represents, that for said sum of money remaining due and unpaid, suit was begun in the Municipal Court of Chicago, in the State of Illinois, such suit being entitled, Rudolph Deutsch and Walter J. Koch, trading under the firm name and style of Washington Ornamental Iron & Wire Works, a co-partnership for the use of the Western Hardware & Metal Company vs. Congress Construction Company, a corporation and such proceedings were taken that on the 29th day of November, A. D. 1907, a judgment was entered in the said Municipal Court of Chicago, State of Illinois, in favor of this intervenor, the Western Hardware & Metal Company against the said Congress Construction Company, for the sum of three hundred and ten dollars (\$310.00) and the costs of said action, amounting to six dollars (\$6.00).

Your petitioner further represents, that nothing has been paid on account of the said judgment, and that it does now remain entirely unsatisfied, and that there is due from the said defendant herein, Congress Construction Company, to your intervenor, the sum of three hundred and sixteen dollars (\$316.) with interest at the rate of five per centum per annum since the 29th day of November, 1907.

Wherefore your petitioner respectfully prays that he may have the right to intervene and to be made party in the above entitled action, instituted by the United States on the bond of the said contractor, Congress Construction Company, against the said contractor and its sureties on said bond, and that it may have its rights and claims adjudicated in such action, and that judgment may be rendered thereon, subject, however to the priority of the claim and judgment of the United States. If the full amount of the liability of

54 the sureties on said bond should prove to be insufficient to pay the full amount of such claims and demands as may be proven in said cause then after paying the full amount due to the United States, your intervenor respectfully prays that such sum as remains, shall be distributed pro rata among such parties as may intervene in said action.

And your intervenor will ever pray, etc.

WESTERN HARDWARE & METAL CO.,
By ELBERT C. FERGUSON, Att'y.

FERGUSON & GOODNOW,
Solicitors for Petitioners.

STATE OF ILLINOIS,
County of Cook, ss:

On this 7th day of July, 1908, before me, personally appeared the above named Elbert C. Ferguson and made oath that he has read the

above petition subscribed by him and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be on his information and that as to those matters he believes — to be true.

ELBERT C. FERGUSON.

Subscribed and sworn to before me, this 7th day of July, A. D. 1908.

[SEAL.]

GUY L. EAMES,
Notary Public.

(Endorsed:) Filed July 8, 1908, H. S. Stoddard, Clerk.

55 And afterwards to-wit: on the sixteenth day of July, 1908, come the Pan-American Bridge Company by its attorneys and filed in the clerk's office of said Court in said entitled cause its certain Intervening Petition in words and figures following to-wit:

56 *Petition of Pan-American Bridge Co.*

In the Circuit Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY et al.

Your petitioner, Pan-American Bridge Company, respectfully represents unto the Court:

That this petition or claim is filed herein by leave of court first had and obtained.

That petitioner is a corporation engaged in the business of building and erecting bridges, structural iron and steel work for buildings, and kindred lines.

That on or about the 14th day of April, 1906, the plaintiff, United States, by the Chief of Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy and the defendant Congress Construction Company, entered into a contract in writing, whereby the said Congress Construction Company agreed to provide, furnish and deliver, at its own risk and expense at the United States navy yard at Bremerton, Washington, all the necessary materials, labor, tools and appliances for the construction of a boiler and blacksmith shop building at said navy yard, in strict accordance with and subject to all the conditions and requirements of certain plans and specifications appended thereto; which said contract is the same contract referred to in plaintiff's declaration herein.

56½ That on or about the 5th day of April, 1906, said Congress Construction Company, and the other defendants, S. M. Crowen and Peter F. Reynolds, executed and delivered to said United States of America their certain bond in writing in the sum of Eighteen Thousand (\$18,000) Dollars, whereby they agreed, among other things,

to promptly make payments to all persons supplying the said Congress Construction Company with labor and materials in the prosecution of the work provided for in the aforesaid contract, which said bond is the same referred to in plaintiff's declaration herein. A copy of said bond is attached hereto and made a part hereof, marked "Exhibit C."

That thereafter the said United States of America, said Congress Construction Company, S. N. Crowen and Peter F. Reynolds, entered into a supplementary agreement whereby some of the terms of said contract were in some respects modified.

That on or about the 21st day of March, 1906, the said Congress Construction Company and your petitioner, Pan-American Bridge Company, entered into an agreement in writing whereby your said petitioner agreed to furnish and deliver f. o. b. Bremerton, Washington, all the steel and iron required in the construction of said boiler and blacksmith shop known as building number 109 at the said navy yard known as the Puget Sound navy yard, state of Washington, in accordance with the plans and specifications of the Bureau of Yards and Docks of the United States, for the sum of Twenty-six Thousand (\$26,000) Dollars, and all according to the terms and provisions of said contract, a copy of which is attached hereto and made a part hereof, marked "Exhibit A."

Petitioner further says that it furnished and delivered, f. o. b. Bremerton, Washington, all the steel and iron required in
57 said boiler and blacksmith shop building number 109, and in all respects complied with all the terms and conditions of said contract; that all the labor and material provided for in said contract which was furnished by your petitioner, were used in the prosecution of the work provided for in the aforesaid contract between the United States and the said Congress Construction Company; that the same have not been paid for; that said Congress Construction Company and said Crowen and Reynolds are indebted to your petitioner therefor in the sum of Fourteen Thousand One Hundred Twenty-four and 68/100 (\$14,124.68) Dollars, with interest from December 31, 1906; that a statement of account therefor is attached hereto and made a part hereof, marked "Exhibit B"; that the said sum is now due, owing and unpaid, and there has been long and unreasonable delay in the payment thereof; that said Congress Construction Company accepted its said work, and that the United States accepted the said building from said Congress Construction Company.

Wherefore, petitioner prays for a judgment in its favor herein against the said defendant Congress Construction Company and the said Peter F. Reynolds and S. N. Crowen, sureties on said bond, in the sum of Fourteen Thousand One Hundred Twenty-four and 68/100 (\$14,124.68) Dollars, with interest thereon from the 31st day of December, 1906, for costs, and all proper relief.

PAN-AMERICAN BRIDGE CO.,
By H. C. YANKY, *Sec'y & Treas.*,
Petitioner.

58 STATE OF INDIANA,
County of Henry, ss:

H. C. Yanky, being first duly sworn, on oath says that he is Secretary and Treasurer of the Pan-American Bridge Company, petitioner herein; that he has read the above and foregoing petition and knows the contents thereof; that the matters and things therein stated are true of his own knowledge, except as to those stated on information and belief, and as to those he believes them to be true.

H. C. YANKY.

Subscribed and sworn to before me, this 2d day of July, A. D. 1908.

[SEAL.]

MABEL C. VAN CAMP,
Notary Public.

My com. ex. Jan. 10, 1912.

CASTLE, WILLIAMS, LONG & CASTLE,
Solicitors for Petitioners.

59

EXHIBIT A.

This agreement made this 21st day of March, 1906, between the Congress Construction Co., of Chicago, Ill., Party of the First Part, and the Pan-American Bridge Co., New Castle, Ind., Party of the Second Part.

For and in consideration of the sum hereinafter mentioned the said Party of the Second Part agrees to furnish and deliver F. O. B. Bremerton, Washington, all of the steel and iron required in Boiler and Blacksmith Shop Building No. 109 at the Puget Sound Navy Yard, Washington, in accordance with plans and specifications by the Bureau of Yards and Docks, Washington, D. C.

The said Party of the Second Part further agrees to make shipment of all the exterior or main wall columns, bases, etc., also all lintels required in main walls (so that the masonry of same may proceed without delay) on or before May 2nd, 1906, and also agrees to make shipment of balance of material required to complete this contract on or before June 29th, 1906.

It is further mutually agreed and understood that such shop drawings forwarded to A. C. Lewerenz, Civil Engineer, Puget Sound Navy Yard, Washington, by the said party of the Second Part will be approved, modified, etc., within three days after their receipt and any additional time required in said approval or otherwise will be added as an extension of time only to the aforesaid date May 2nd, 1906, and is not in any way to affect the final date (June 29th, 1906) of completion of this contract.

For the above mentioned labor, material, etc., the said Party of the First Part agrees to pay the said Party of the Second Part the sum of Twenty-six thousand dollars (\$26000.00), which amount is

60 to be paid at the rate of Eighty-five per cent upon the cost of delivered materials, and the balance of Fifteen per cent so withheld is to be paid within thirty days after the completion of this contract.

The aforesaid payments to be made on or before the 15th of the month following the month in which material is delivered on the cost basis of Seventy-one dollars (\$71.00) per ton, less the so noted Fifteen per cent.

It is mutually agreed and understood between the parties hereto that the Bureau of Yards and Docks or its representative in the Puget Sound Navy Yard is to be the sole interpreter of the plans and specifications on which this contract is based.

The said party of the Second Part further agrees to deliver to the said Party of the First Part an ample supply of rivets for field work, etc.

The said party of the Second Part further agrees to furnish a surety company bond made payable to the said Party of the First Part in amount Ten thousand dollars (\$10000.00) for the faithful performance of this contract, and to hold them free from damages of any kind through their inability or neglect in complying with the terms of this agreement.

In witness whereof we have hereunto set our hands and seals this 21st day of March, 1906.

[CORPORATE SEAL.]

CONGRESS CONSTRUCTION CO.,
By FRED A. S. BRITTON, *Sec'y.*

[CORPORATE SEAL.]

PAN AMERICAN BRIDGE CO.,
By JESSE D. SMITH, *Mgr.*

60½ Know all men by these presents, That we, the Pan American Bridge Company, of Newcastle, Indiana, a corporation organized and existing under and by virtue of the laws of the State of Indiana, as principal, and the United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto the Congress Construction Company of Chicago, Illinois, in the sum of Ten Thousand (\$10,000) Dollars, for which payment, well and truly to be made, we bind ourselves, our successors, representatives and assigns.

Whereas, the said Pan American Bridge Company has contracted with said Congress Construction Company to furnish structural steel material for boiler and blacksmith shop #109 at Puget Sound Navy Yard, Washington, said material to be furnished f. o. b. Bremerton, Washington, and for the consideration therein expressed to be paid: now, therefore, the condition of this obligation is such that if the said Pan American Bridge Company shall fully perform said contract on its part, then this obligation is to be void, otherwise, the same shall be and remain in full force and virtue.

In witness whereof, the said principal and surety have hereunto affixed their signatures and seals this 23rd day of March, 1906.

PAN AMERICAN BRIDGE COMPANY,
By JESSE D. SMITH, *Mgr.*,
THE UNITED STATES FIDELITY AND
GUARANTY COMPANY,
By CLAY C. HUNT,
Its Att'y in Fact. [SEAL.]

Witness as to principal:
H. C. YANKY.

Witness as to surety:
FRANK W. NIXON.

61

EXHIBIT B.

NEW CASTLE, IND., Jan. 1, 1908.

Congress Construction Co., Chicago, Ills., to Pan American Bridge Co., Dr.:

Dr.

To steel, iron and other materials furnished and labor performed by the Pan-American Bridge Co. under contract between the Congress Construction Co. and full compliance with said contract..... \$26,000.00

Cr.

1906.

Sep. 25,	By cash.....	\$2,000.00
Dec. 7,	" "	3,000.00

1907.

Jan. 15,	" "	2,500.00
June 24,	" "	2,000.00
Oct. 1,	By counter charges.....	2,375.32
		<hr/> 11,875.32

Balance due Pan-American Bridge Co.....	\$14,124.68
With interest from Dec. 31, 1906.	

62

EXHIBIT C.

Bond.

(NOTE.—This form to be used when Bond is not given by a corporation authorized to act as sole surety.)

Know all men by these presents, That we, Congress Construction Co., principal, and S. N. Crowen, of Chicago, Ill., Peter F. Reynolds, of Chicago, Ill., as sureties, are held and firmly bound unto the

United States of America in the penal sum of Eighteen thousand dollars (\$18,000.00) dollars, to be paid to the said United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, assigns and representatives, jointly and severally, by these presents.

Signed, sealed with our seals, and dated this fifth day of April, A. D. 1906.

Conditions.

- 1 The condition of the above bond is such, that if the said above bounden principal
- 2 Congress Construction Co.
- 3 *his or* their heirs, successors, executors or administrators shall well and truly, and in a
- 4 satisfactory manner, fulfill and perform the stipulations of the contract hereto annexed,
- 5 entered into with the Chief of the Bureau of Yards and Docks, acting under the directions
- 6 of the Secretary of the Navy, for and in behalf of the United States, and shall conform in
- 7a all respects to said contract, as it now exists or may be modified by the parties thereto,
- 8 according to its terms, and to the plans and specifications attached thereto and forming a
- 9 part thereof, and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and
- 10 shall promptly make payments to all persons supplying *him or* them labor and materials in
- 63 11 the prosecution of the work provided for in the aforesaid contract, then this obligation to
- 12 be void and of no effect; otherwise to remain in full force and virtue.

(Signed)

CONGRESS CONSTRUCTION
CO., [SEAL.]
Per FRED A. S. BRITTEN, *Sec'y.*
S. N. CROWEN. [SEAL.]
PETER F. REYNOLDS. [SEAL.]

Signed, Sealed and Delivered in Presence of—
— — —

Justification of the Sureties.

STATE OF ILLINOIS,
County of Cook, ss:

I, S. N. Crowen, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand (\$20,000) dollars over and above all my debts and liabilities.

(Signed)

S. N. CROWEN.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

I, Peter F. Reynolds, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand dollars (\$20,000.00) over and above all my debts and liabilities.

(Signed)

PETER F. REYNOLDS.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
Notary Public.

64

Certificate.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Mark A. Foote, United States Commissioner for said district, do hereby certify that S. N. Crowen and Peter F. Reynolds, the sureties above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

(Signed)
[SEAL.]

MARK A. FOOTE,
U. S. Commissioner, N. D. of Ill.
(Official title.)

*The Justification of the Sureties to be sworn to before a notary public or other officer authorized to administer oaths.

†The Certificate to be signed by any United States Officer.

(Endorsed:) Filed July 16, 1908, H. S. Stoddard, Clerk.

65

And on the same day to-wit: the sixteenth day of July, 1908, come the Denny-Renton Clay & Coal Company by its attorneys and filed in the clerk's office of said Court in said entitled cause its certain Intervening Petition in words and figures following to-wit:

66

Petition of Denny-Renton Clay & Coal Co.

In the Circuit Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA

vs.

CONGRESS CONSTRUCTION COMPANY et al.

Your petitioner, Denny-Renton Clay & Coal Company, respectfully represents unto the Court:

That this petition or claim is filed herein by leave of court first had and obtained.

That petitioner is a corporation engaged in the business of manufacturing, dealing in and selling pressed brick, sewer brick and other kinds of brick, and kindred lines.

That on or about the 14th day of April, 1906, the plaintiff, United States, by the Chief of Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy, and the defendant Congress Construction Company, entered into a contract in writing, whereby the said Congress Construction Company agreed to provide, furnish and deliver, at its own risk and expense, at the United States navy yard at Bremerton, Washington, all the necessary materials, labor, tools and appliances for the construction of a boiler and blacksmith shop building at said navy yard, in strict accordance with and subject to all the conditions and requirements of certain plans and specifications appended thereto; which said contract is the same contract referred to in plaintiff's declaration herein.

67 That on or about the 5th day of April, 1906, said Congress Construction Company, and the other defendants, S. N. Crowen and Peter F. Reynolds, executed and delivered to said United States of America their certain bond in writing in the sum of Eighteen Thousand (\$18,000) Dollars, whereby they agreed, among other things, to promptly make payments to all persons supplying the said Congress Construction Company with labor and materials in the prosecution of the work provided for in the aforesaid contract, which said bond is the same referred to in plaintiff's declaration herein. A copy of said bond is attached hereto and made a part hereof, marked "Exhibit B."

That thereafter the said United States of America, said Congress Construction Company, S. N. Crowen and Peter F. Reynolds, entered into a supplementary agreement whereby some of the terms of said contract were in some respects modified.

That the defendant Congress Construction Company is indebted to the petitioner for goods, wares and merchandise sold and delivered by petitioner to the said defendant at the special instance and request of said defendant, in the sum of Three Hundred Sixty-one and 45/100 (\$361.45) Dollars, with interest thereon from the 21st day of March, 1907, a bill of particulars of which is attached hereto and made a part hereof, marked "Exhibit A."

That said goods, wares and merchandise mentioned in said bill of particulars were furnished for, delivered to and used in and about the construction of said boiler and blacksmith shop, building No. 109, at the said United States navy yard at Bremerton, Washington;

68 that all of same were used in the prosecution of the work provided for in the aforesaid contract between the United States and said Congress Construction Company; that the same have not been paid for; that said sum is now due, owing and unpaid, and there has been long and unreasonable delay in the payment thereof; that said Congress Construction Company accepted said materials and the said United States accepted the said building from said Congress Construction Company, by reason of all of which the said S. N. Crowen and Peter F. Reynolds, together with said Congress Construction Company, have been and are now liable on the aforesaid bond for the amount due your petitioner as aforesaid.

Wherefore, petitioner prays for a judgment in its favor herein against the said defendant Congress Construction Company and the said Peter F. Reynolds and S. N. Crowen, sureties on said bond, in the sum of Three Hundred Sixty-one and 45/100 (\$361.45) Dollars, with interest thereon from the 21st day of March, 1907, for costs, and all proper relief.

DEN-Y-RENTON CLAY & COAL CO.,

Petitioner.

By J. R. MILLER, *Sec'y.*

69 STATE OF WASHINGTON,
County of King, ss:

J. R. Miller, being first duly sworn, on oath says that he is Secretary of the Denny-Renton Clay & Coal Company, petitioner herein; that he has read the above and foregoing petition and knows the contents thereof; that the matters and things therein stated are true of his own knowledge, except as to those stated on information and belief, and as to those he believes them to be true.

J. R. MILLER.

Subscribed and sworn to before me this 7th day of July, 1908.

[SEAL.]

A. J. TENNANT,
*Notary Public in and for the State of Washington,
Residing at Seattle.*

CASTLE, WILLIAMS, LONG & CASTLE,
Solicitors for Petitioner.

70 Moritz Thomsen, President.
Peter Larson, Vice-Pres't.

All Prices, Agreements and Contracts are contingent upon strikes, accidents, delays to carriers, and other delays, unavoidable or beyond our control, including fire. All quotations are made subject to change without notice.

SEATTLE, WASH., Jan'y 1st, 1908.

Congress Cons. Co., Bremerton, Wash.,

Bought of Denny-Renton Clay & Coal Co., Successors to Denny Clay Company, Manufacturers of Pressed Brick, plain & ornamental. Fire Brick, plain and shapes. Paving Brick, annealed. High Grade Acid Brick. Common Brick. Terra Cotta. Fire Clay. Fire Proofing. Fire Clay. Chimney Pipe. Foundation Blocks, annealed. Sewer Pipe, annealed salt glazed. Electric Conduit Tile. Drain Tile and Well Tubing. Locomotive and Furnace Blocks. Fire Clay, same clay as brick. Special Sidewalk tile. Lawn Vases.

General Offices, Dexter Horton & Co. Bank Bldg. Entrance, Room 71. Retail Yard, Weller St. and Fourth Av. South. Factories, Van Asselt, Renton & Taylor, Wash.

Req. No. —. Terms — Days. Payable in U. S. Gold coin. Interest will be charged on all bills not paid when due. No one is authorized to make collections except on written order from this Office.

Telephones: General Office, Main 1030; City Yard, Main 21.

1906.

Aug. 10.	10 M Sewer Brick.....	14.50	145.00
"	10,600 " "		153.70
21.	To rent of Gridiron Aug. 10th.....		12.50
31.	15,400 Sewer Brick.....	14.50	
	1500 Pressed Brick.....		245.05
Sep. 25.	30,500 Sewer Brick.....	14.50	442.25
26.	To loading 16900 Pressed Brick in Scow Aug. 10th, 1906 @ 65¢		11.00
	To loading Scow 30500 Brick Sept. 26th, 1906 @ 65¢....	19.80	
	To bunging in Wheelbarrows..	6.00	
			36.80

Dec. 21.	6 M Building Pavers @ 14.50.....	87.00
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1907.

Mar. 21.	1500 " " 19.50	28.50
	Cartage	3.50
	Fr't	7.15

39.15

1161.45

Credits:

1906.		
Oct. 15.	By Cash on a/c.....	500.00
1907.		
Jan. 30.	" " "	300.00
		<hr/>
		800.00
		<hr/>
		361.45

71

EXHIBIT B.

Bond.

(NOTE.—This form to be used when Bond is not given by a corporation authorized to act as sole surety.)

Know all men by these presents, That we, Congress Construction Co., principal, and S. N. Crowen, of Chicago, Ill., Peter F. Reynolds, of Chicago, Ill., as sureties, are held and firmly bound unto the United States of America in the penal sum of Eighteen thousand dollars (\$18,000.00) *dollars*, to be paid to the said United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, assigns and representatives, jointly and severally, by these presents.

Signed, sealed with our seals, and dated this fifth day of April, A. D. 1906.

Conditions.

- 1 The condition of the above bond is such, that if the said above bounden principal
- 2 Congress Construction Co.
- 3 *his or* their heirs, successors, executors or administrators shall well and truly, and in a
- 4 satisfactory manner, fulfill and perform the stipulations of the contract hereto annexed,
- 5 entered into with the Chief of the Bureau of Yards and Docks, acting under the directions
- 6 of the Secretary of the Navy, for and in behalf of the United States, and shall conform in
- 7 all respects to said contract, as it now exists or may be modified by the parties thereto,
- 8 according to its terms, and to the plans and specifications attached thereto and forming a
- 9 part thereof, and to the satisfaction of the Chief of the Bureau of Yards and Docks, and
- 10 shall promptly make payments to all persons supplying *him or* them labor and materials in
- 72
- 11 the prosecution of the work provided for in the aforesaid contract, then this obligation to

12 be void and of no effect; otherwise to remain in full force and virtue.

(Signed) CONGRESS CONSTRUCTION CO., [SEAL.]

Per FRED A. S. BRITTEN, *Sec'y.*

S. N. CROWEN.

PETER F. REYNOLDS.

[SEAL.]

[SEAL.]

Signed, Sealed and Delivered in Presence of—

Justification of the Sureties.

STATE OF ILLINOIS,

County of Cook, ss:

I, S. N. Crowen, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand (\$20,000) dollars over and above all my debts and liabilities.

(Signed)

S. N. CROWEN.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]

Notary Public.

STATE OF ILLINOIS,

County of Cook, ss:

I, Peter F. Reynolds, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand dollars (\$20,000.00) over and above all my debts and liabilities.

(Signed)

PETER F. REYNOLDS.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]

Notary Public.

73

Certificate.

UNITED STATES OF AMERICA,

Northern District of Illinois, ss:

I, Mark A. Foote, United States Commissioner for said district, do hereby certify that S. N. Crowen and Peter F. Reynolds, the sureties above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

(Signed)

[SEAL.]

MARK A. FOOTE,

U. S. Commissioner, N. D. of Ill.

(Official title.)

*The Justification of the Sureties to be sworn to before a notary public or other officer authorized to administer oaths.

†The Certificate to be signed by any United States Officer.

(Endorsed:) Filed July 16, 1908. H. S. Stoddard, Clerk.

74 And on the same day to-wit: the sixteenth day of July, 1908, come the Seattle Paint Company by its attorneys and filed in the clerk's office of said Court, in said entitled cause its certain Intervening Petition in words and figures following towit:

75 *Intervening Petition of Seattle Paint Company.*

In the Circuit Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY et al.

Your petitioner, Seattle Paint Company, respectfully represents unto the Court:

That this petition or claim is filed herein by leave of Court first had and obtained.

That petitioner is a corporation engaged in the manufacture and sale of paints, leads, oil, varnishes and kindred lines.

That on or about the 14th day of April, 1906, the plaintiff, United States, by the Chief of Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy, and the defendant Congress Construction Company, entered into a contract in writing, whereby the said Congress Construction Company agreed to provide, furnish and deliver, at its own risk and expense, at the United States navy yard at Bremerton, Washington, all the necessary materials, labor, tools and appliances for the construction of a boiler and blacksmith shop building at said navy yard, in strict accordance with and subject to all the conditions and requirements of certain plans and specifications appended thereto; which said contract is the same contract referred to in plaintiff's declaration herein.

76 That on or about the 5th day of April, 1906, said Congress Construction Company, and the other defendants, S. N. Crowen and Peter F. Reynolds, executed and delivered to said United States of America their certain bond in writing in the sum of Eighteen Thousand (\$18,000) Dollars, whereby they agreed, among other things, to promptly make payments to all persons supplying the said Congress Construction Company with labor and materials in the prosecution of the work provided for in the aforesaid contract, which said bond is the same referred to in plaintiff's declaration herein. A copy of said bond is attached hereto and made a part hereof, marked "Exhibit B."

That thereafter the said United States of America, said Congress Construction Company, S. N. Crowen and Peter F. Reynolds entered into a supplementary agreement whereby some of the terms of said contract were in some respects modified.

That the defendant Congress Construction Company is indebted to the petitioner for goods, wares and merchandise sold and delivered by petitioner to the said defendant at the special instance and request

of said defendant, in the sum of Four Hundred Thirty and 38/100 (\$430.38) Dollars, with interest thereon from the 19th day of July, 1907, a bill of particulars of which is attached hereto, in fourteen (14) sheets, and made a part hereof, marked "Exhibit A."

That the said goods, wares and merchandise mentioned in said bill of particulars were furnished for, delivered to and used in and about the construction of said boiler and blacksmith shop building No. 109 at the said United States navy yard at Bremerton, Washington; that all of same were used in the prosecution of the work provided for in the aforesaid contract between the United States and said Congress Construction Company; that the same have not been paid for; that said sum is now due, owing and unpaid, and there has been long and unreasonable delay in the payment thereof; that said Congress Construction Company accepted said materials and the said United States accepted the said building from said Congress Construction Company, by reason of all of which the said S. N. Crowen and Peter F. Reynolds, together with said Congress Construction Company, have been and are now liable on the aforesaid bond for the amount due your petitioner as aforesaid.

Wherefore, petitioner prays for a judgment in its favor herein against the said defendant Congress Construction Company and the said Peter F. Reynolds and S. N. Crowen, sureties on said bond, in the sum of Four Hundred Thirty and 38/100 (\$430.38) Dollars, with interest thereon from the 19th day of July, 1907, for costs, and all proper relief.

SEATTLE PAINT COMPANY,
By F. S. RODDIE, *Treasurer,*
Petitioner.

78 STATE OF WASHINGTON,
County of King, ss:

F. S. Roddie, being first duly sworn, on oath says that he is Treasurer of Seattle Paint Company, petitioner herein; that he has read the above and foregoing petition and knows the contents thereof; that the matters and things therein stated are true of his own knowledge, except at to those stated on information and belief, and as to those he believes them to be true.

F. S. RODDIE.

Subscribed and sworn to before me, this 8th day of July, 1908.

[SEAL.]

JOSIAH THOMAS,
Notary Public,
Notary Public in and for the State of
Washington, Residing at Seattle.

CASTLE, WILLIAMS, LONG & CASTLE,
Sol'rs for Petitioner.

- 79 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms —.

Shipped via Port Orchard route.

Pier 2.

Order No. —.

SEATTLE, WASH., Apr. 12, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay No Money to Agents Unless by Check to our Order.

No Claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

400 lbs. Rainier Lead .....	.08	32.00
1 Bbl. Boiled L. Oil 486-89 53 Gal.....	.52	27.56
3 Gal. Turpentine 1.00 & Can .10.....		3.10
1 Bbl. Graphite 54 Gal.....	1.00	54.00
1 Bbl. Prince's Metallic Dark 300#.....	1.75	5.25
4 only #30 O. K. Stucco Brushes.....	1.45	5.80
4 " #20 Simoon Sash Tools .....	.10	.40
6 " 25# Zinc Pails—reamed edges.....	.18	1.08
Cartage .....		.50
		<hr/>
		\$129.69

- 80 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms —.

Shipped —.

SEATTLE, WASH., Apr. 23, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay No Money to Agents Unless by Check to our Order.

No Claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

1 carboy Muriatic Acid 120#.....	.04	6.80
100 lbs. Rainier Lead .....	.08	8.00
Cartage.....		.25
		<hr/>
		\$15.05

- 81 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms ———.

Shipped ———.

SEATTLE, WASH., Apr. 27, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay No Money to Agents Unless by Check to our Order.

No Claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

5 Gal. B. Japan 5s.....	.70	3.50
4 only 2" A A Varnish Brushes.....	.35	1.40
4 " 3½ Imperial Flat Wall Brushes.....	.60	2.40
Cartage.....		.25
		<hr/>
		\$7.55

- 82 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms ———

Shipped via Boat.

Order No. —.

SEATTLE, WASH., May 8, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay No Money to Agents Unless by Check to our Order.

No Claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

1 Bbl. Boiled L. Oil 486-75 55 Gal.....	.52	28.60
200 lbs. Red Lead .....	.08¾	17.50
5 Gal. Turpentine .....	.85	4.30
Cartage .....		.50
		<hr/>
		\$50.90

- 83 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms —.

Shipped —.

SEATTLE, WASH., May 25, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay No Money to Agents Unless by Check to our Order.

No Claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

400 lbs. Rainier White Lead.....	.08	32.00
400 " Red Lead—Math—.....	.08 $\frac{3}{4}$	35.00
4 Gal. Turpentine 90 & Can.....	.10	4.00
2 Gal. B. Japan.....	.70	1.40
Cartage.....		.25
		<hr/>
		\$72.65

- 84 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms —.

Shipped — Bremerton.

SEATTLE, WASH., May 31, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay No Money to Agents Unless by Check to our Order.

No Claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

1 Bbl. Boiled Oil 460-76 51 $\frac{1}{2}$ Gal.....	.52	26.78
2 Gal. B. Japan Dryer.....	.80	1.60
5 " Benzine .....	.25	1.25
1 Bbl. Prince's Metallic 300#	1.75	5.25
1 Dox Imperial Wall Brushes 4".....		7.50
Cartage.....		.25
		<hr/>
		\$42.63

- 85 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms —.

Shipped via Boat.

Order No. —.

SEATTLE, WASH., June 6, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay No Money to Agents Unless by Check to our Order.

No claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

200 lbs. Red Lead Dry.....	.08¾	17.50
300 lbs. Rainier White lead.....	.08	24.00
Cartage.....		.25
		<hr/>
		\$41.75

- 86 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms —.

Shipped via Boat.

Order No. —.

SEATTLE, WASH., June 8, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay No Money to Agents Unless by Check to our Order.

No claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

1 Bbl. Boiled Oil 473-74 53 1/5 Gal.....	.55	29.26
Cartage.....		.25
		<hr/>
		\$29.51

- 87 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms —.

Shipped via Boat.

Order No. —.

SEATTLE, WASH., June 12, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay No Money to Agents Unless by Check to our Order.

No claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

200 lbs. Red Lead Dry 2/100s.....	.08¾	17.50
1 Bbl. Boiled Lins. Oil 454-85 49 1/5 Gal.....	.55	27.06
Cartage.....		.25
		<hr/>
		\$44.81

- 88 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms —.

Shipped via Boat.

Order No. —.

SEATTLE, WASH., June 12, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay No Money to Agents Unless by Check to our Order.

No claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

1 Bbl. Prince's Metallic 300 #.....	1.75	5.25
Cartage.....		.25
		<hr/>
		\$5.50

- 89 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms ———.

Shipped via Boat.

SEATTLE, WASH., June 13, 1907.

Sold to Congress Construction Co., Bremerton City.

Pay no money to agents unless by check to our order.

No claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

1 Bbl. Prince's Metallic 300#	1.75	5.25
Cartage .....		.25
		<hr/>
		\$5.50

- 90 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms ———.

Shipped via ———.

SEATTLE, WASH., June 21, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay no money to agents unless by checks to our order.

No claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

1 Bbl. Boiled L. Oil 445-4 48 2/15 Gal. ....	.55	26.47
1 " Prince's Metallic 300#	1.75	5.25
Cartage .....		.25
		<hr/>
		\$31.97

- 91 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms —.

Shipped via —.

SEATTLE, WASH., June 27, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay no money to agents unless by check to our order.

No claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

1 Bbl. Prince's Metallic 300 #	1.65	4.95
Cartage		.25
		<hr/>
		\$5.20

- 92 Seattle Paint Co., Manufacturers and Jobbers of Rainier
Mixed Paints, Colors in Oil, Lead, Oil, Varnishes, &c.

Trade Mark.

Factory, Stewart St. and Howard Ave.

Office and Salesroom, 309 First Ave. South.

Agents for Pratt & Lambert's Varnishes.

Terms —.

Shipper via Boat, Bremerton, W'n.

SEATTLE, WASH., July 3, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Pay no money to agents unless by check to our order.

No claims for shortage or deductions of any kind allowed unless
made within ten days from date of invoice.

1 Bbl. Graphite Paint 55 Gal.	1.00	55.00
Cartage		.50
		<hr/>
		\$55.50

93

EXHIBIT A.

Bond.

(NOTE.—This form to be used when Bond is Not given by a corporation authorized to act as sole surety.)

Know all men by these presents, That we, Congress Construction Co., principal, and S. N. Crowen, of Chicago, Ill., Peter F. Reynolds, of Chicago, Ill., as sureties, are held and firmly bound unto the United States of America in the penal sum of Eighteen thousand dollars (\$18,000.00) *dollars*, to be paid to the said United States for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, assigns and representatives, jointly and severally, by these presents.

Signed, sealed with our seals, and dated this fifth day of April, A. D. 1906.

Conditions.

- 1 The condition of the above bond is such, that if the said above bounden principal
 - 2 Congress Construction Co.
 - 3 *his or* their heirs, successors, executors or administrators shall well and truly, and in a
 - 4 satisfactory manner, fulfill and perform the stipulations of the contract hereto annexed,
 - 5 entered into with the Chief of the Bureau of Yards and Docks, acting under the directions
 - 6 of the Secretary of the Navy, for and in behalf of the United States, and shall conform in
 - 7a all respects to said contract, as it now exists or may be modified by the parties thereto,
 - 8 according to its terms, and to the plans and specifications attached thereto and forming a
 - 9 part thereof, and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and
 - 10 shall promptly make payable to all persons supplying *him or* them labor and materials in
- 94
- 11 the prosecution of the work provided for in the aforesaid contract, then this obligation to
 - 12 be void and of no effect; otherwise to remain in full force and virtue.

(Signed) CONGRESS CONSTRUCTION CO., [SEAL.]

Per FRED A. S. BRITTEN, *Sec'y.*

S. N. CROWEN.

PETER F. REYNOLDS.

[SEAL.]
[SEAL.]

Signed, Sealed and Delivered in Presence of—

Justification of the Sureties.

STATE OF ILLINOIS,
County of Cook, ss:

I, S. N. Crowen, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand (\$20,000) dollars over and above all my debts and liabilities.

(Signed)

S. N. CROWEN.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

I, Peter F. Reynolds, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand dollars (\$20,000.00) over and above all my debts and liabilities.

(Signed)

PETER F. REYNOLDS.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
Notary Public.

95

Certificate.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Mark A. Foote, United States Commissioner for said district, do hereby certify that S. N. Crowen and Peter F. Reynolds, the sureties above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

(Signed)

[SEAL.]

MARK A. FOOTE,
U. S. Commissioner, N. D. of Ill.
(Official title.)

* The Justification of the Sureties to be sworn to before a notary public or other officer authorized to administer oaths.

† The Certificate to be signed by any United States Officer.

(Endorsed:) Filed July 16, 1908. H. S. Stoddard, Clerk.

96 And on the same day to-wit: the sixteenth day of July, 1908, come the Hofius Steel and Equipment Company by its attorneys and filed in the clerk's office of said court in said entitled cause its certain Intervening Petition in words and figures following to-wit:

97 *Intervening Petition of Hofius Steel & Equipment Co.*

In the Circuit Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA

vs.

CONGRESS CONSTRUCTION COMPANY et al.

Your petitioner Hofius Steel & Equipment Company, respectfully represents unto the Court:

That this petition or claim is filed herein by leave of court first had and obtained.

That petitioner is a corporation engaged in the handling, dealing in and selling rails, angle bars and bolts, structural material, and kindred lines.

That on or about the 14th day of April, 1906, the plaintiff, United States, by the Chief of Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy, and the defendant Congress Construction Company, entered into a contract in writing whereby the said Congress Construction Company agreed to provide, furnish and deliver, at its own risk and expense, at the United States navy yard at Bremerton, Washington, all the necessary materials, labor, tools and appliances for the construction of a boiler and blacksmith shop building at said navy yard, in strict accordance with and subject to all the conditions and requirements of certain plans and specifications appended thereto; which said contract is the same contract referred to in plaintiff's declaration herein.

98 That on or about the 5th day of April, 1906, said Congress Construction Company, and the other defendants, S. N. Crowen and Peter F. Reynolds, executed and delivered to said United States of America their certain bond in writing in the sum of Eighteen Thousand (\$18,000.00) Dollars whereby they agreed, among other things, to promptly make payments to all persons supplying the said Congress Construction Company with labor and materials in the prosecution of the work provided for in the afore-said contract, which said bond is the same referred to in plaintiff's declaration herein. A copy of said bond is attached hereto and made a part hereof, marked "Exhibit B."

That thereafter the said United States of America, said Congress Construction Company, S. N. Crowen and Peter F. Reynolds, entered into a supplementary agreement whereby some of the terms of said contract were in some respects modified.

That said defendant Congress Construction Company is indebted

to the petitioner for goods, wares and merchandise sold and delivered by petitioner to the said defendant, at the special instance and request of said defendant, in the sum of Nine Hundred Ten and 28/100 (\$910.28) Dollars, including interest of Fourteen and 73/100 (\$14.73) Dollars, which total sum bears interest from September 28th, 1907, a bill of particulars of which is attached hereto and made a part hereof, marked "Exhibit A."

That said goods, wares and merchandise mentioned in said bill of particulars were furnished for, delivered to and used in and about the construction of said boiler and blacksmith shop building No. 109 at the United States navy yard at Bremerton, Washington; that all of same were used in the prosecution of the work provided for in the aforesaid contract between the United States and said Congress Construction Company; that the same have not been paid for; that said sum is now due owing and unpaid, and there has been long and unreasonable delay in the payment thereof; that said Congress Construction Company accepted said materials and the said United States accepted the said building from said Congress Construction Company, by reason of all of which the said S. N. Crowen and Peter F. Reynolds, together with said Congress Construction Company, have been and are now liable on the aforesaid bond for the amount due your petitioner as aforesaid.

Wherefore, petitioner prays for a judgment in its favor herein against the said defendant Congress Construction Company and the said Peter F. Reynolds and S. N. Crowen, sureties on said bond, in the sum of Nine Hundred Ten and 28/100 (910.28) Dollars, including interest of Fourteen and 73/100 (\$14.73) Dollars, with interest thereon from September 28, 1907, for costs, and all proper relief.

HOFIUS STEEL & EQUIPMENT CO.,
By W. W. WILLIAMS, *Sec'y,*
Petitioner.

100 STATE OF WASHINGTON,
County of King, ss:

W. W. Williams, being first duly sworn, on oath says that he is Secretary of the Hofius Steel & Equipment Company, petitioner herein; that he has read the above and foregoing petition and knows the contents thereof; that the matters and things therein stated are true of his own knowledge, except as to those stated on information and belief, and as to those he believes them to be true.

W. W. WILLIAMS.

Subscribed and sworn to before me this 7th day of July, 1908.

[SEAL.]

A. J. TENNANT,
Notary Public in and for the State
of Washington Residing at Seattle.

CASTLE, WILLIAMS, LONG & CASTLE,
Solicitors for Petitioner.

101 Hofius Steel & Equipment Co., 812-816 Lowman Building.

Remit in Seattle, Tacoma, Portland or Eastern Exchange.
 Inv. No. 2266. Req. No. Verbal. F. O. B. Car our Yard.
 Shipped via Orig. Inv. with B. L. Car H S & E 3.

Rails, Railway Supplies, Locomotives, Cars, Structural Material,
 Cast Iron Pipe, Pig Iron.

SEATTLE, WASH., June 11, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Terms: Net Cash, No Discount.

No claims for shortage or overcharge will be allowed unless made
 immediately, giving invoice, date and number.

35 72# Rails 33'.....	27720 # 2-3 4 cts.	762.30
35 Prs. Angle Bars & Bolts... }	1.75	61.25
140 $\frac{3}{4}$ x 3 $\frac{3}{4}$ Bolts..... }		
Labor Bending Rails:		
60 Hours Blacksmith.....	.75	45.00
60 " Helper....	.40	24.00
M. Switching car to dock.....		3.00
		<hr/>
		895.55
		14.73†
		<hr/>
		910.28†

102 Hofius Steel & Equipment Co., "L" 812-816 Lowman Building.

Remit in Seattle, Tacoma, Portland or Eastern Exchange.
 Inv. No. 3557. Req. No. F. O. B.
 Shipped via Orig. Inv. with B. L.

Rails, Railway Supplies, Locomotives, Cars, Structural Material,
 Cast Iron Pipe, Pig Iron.

SEATTLE, WASH., Sept. 28, 1907.

Sold to Congress Construction Co., Bremerton, Wash.

Terms: Net Cash, No Discount.

No claims for shortage or overcharge will be allowed unless made
 immediately, giving invoice, date and number.

Interest for 74 Days on 895.55 at 8% 14.73.
 PEM.

[† In pencil in copy.]

103

EXHIBIT B.

Bond.

(NOTE.—This form to be used when Bond is not given by a corporation authorized to act as sole surety.)

Know all men by these presents, That we, Congress Construction Co., principal, and S. N. Crowen, of Chicago, Ill., Peter F. Reynolds, of Chicago, Ill., as sureties, are held and firmly bound unto the United States of America in the penal sum of Eighteen thousand dollars (\$18,000.00) dollars, to be paid to the said United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, assigns and representatives, jointly and severally, by these presents.

Signed, sealed with our seals, and dated this fifth day of April, A. D. 1906.

Conditions.

- 1 The condition of the above bond is such, that if the said above bounden principal
 - 2 Congress Construction co.
 - 3 *his or* their heirs, successors, executors or administrators shall well and truly, and in a
 - 4 satisfactory manner, fulfill and perform the stipulations of the contract hereto annexed,
 - 5 entered into with the Chief of the Bureau of Yards and Docks, acting under the directions
 - 6 of the Secretary of the Navy, for and in behalf of the United States, and shall conform in
 - 7a all respects to said contract, as it now exists or may be modified by the parties thereto,
 - 8 according to its terms, and to the plans and specifications attached thereto and forming a
 - 9 part thereof, and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and
 - 10 shall promptly make payments to all persons supplying *him or* them labor and materials in
- 104
- 11 the prosecution of the work provided for in the aforesaid contract, then this obligation to
 - 12 be void and of no effect; otherwise to remain in full force and virtue.

(Signed) CONGRESS CONSTRUCTION CO., [SEAL.]

Per FRED A. S. BRITTEN, *Sec'y.*

S. N. CROWEN.

PETER F. REYNOLDS.

[SEAL.]

[SEAL.]

Signed, Sealed and Delivered in Presence of—

Justification of the Sureties.

STATE OF ILLINOIS,
County of Cook, ss:

I, S. N. Crowen, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand (\$20,000) dollars over and above all my debts and liabilities.

(Signed)

S. N. CROWEN.

Subscribed and sworn to before me, this fifth day of April, 1906.
MAYME BROWN, [SEAL.]
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

I, Peter F. Reynolds, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand dollars (\$20,000.00) over and above all my debts and liabilities.

(Signed)

PETER F. REYNOLDS.

Subscribed and sworn to before me, this fifth day of April, 1906.
MAYME BROWN, [SEAL.]
Notary Public.

105 *Certificate.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Mark A. Foote, United States Commissioner for said district, do hereby certify that S. N. Crowen and Peter F. Reynolds, the sureties above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

(Signed)

MARK A. FOOTE,
U. S. Commissioner, N. D. of Ill.
(Official Title.)

[SEAL.]

* The Justification of the Sureties to be sworn to before a notary public or other officer authorized to administer oaths.

† The Certificate to be signed by any United States Officer.

(Endorsed:) Filed July 16, 1908, H. S. Stoddard, Clerk.

106 And on the same day to-wit: the sixteenth day of July, 1908, come the Robinson Manufacturing Company by its attorneys and filed in the clerk's office of said court in said entitled

cause its certain Intervening Petition in the words and figures following to wit:

107 *Intervening Petition of Robinson Manufacturing Company.*

In the Circuit Court of the United States for the Northern District of Illinois.

29,114.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY et al.

Your petitioner, Robinson Manufacturing Company, by leave of court first had and obtained, respectfully represents unto the court that it is a corporation organized and existing under the laws of the State of Washington with its principal office in the City of Everett therein; that it is engaged in the business of manufacturing sash and doors, window glass, and other kindred building material; that on or about the 14th day of April, 1906, the plaintiff, United States, by the Chief of Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy and the defendant Congress Construction Company, entered into a contract in writing, whereby the said Congress Construction Company agreed to provide, furnish and deliver, at its own risk and expense, at the United States navy yard at Bremerton, Washington, all the necessary materials, labor, tools and appliances for the construction of a boiler and blacksmith shop building at said navy yard, in strict accordance with and subject to all the conditions and requirements of certain plans and specifications appended thereto; which said contract is the same contract referred to in plaintiff's declaration herein.

That on or about the 5th day of April, 1906, said Congress Construction Company, and the other defendants, S. N. Crowen and Peter F. Reynolds, executed and delivered to said United States of America their certain bond in writing in the sum of 108 Eighteen Thousand (\$18,000) Dollars, whereby they agreed, among other things, to promptly make payments to all persons supplying the said Congress Construction Company with labor and materials in the prosecution of the work provided for in the aforesaid contract, which said bond is the same referred to in plaintiff's declaration herein, a copy of which is hereto attached marked "Exhibit B."

That thereafter the said United States of America, said Congress Construction Company, S. N. Crowen and Peter F. Reynolds, entered into a supplementary agreement whereby some of the terms of said contract were in some respects modified.

That on or about the 12th day of December, 1906, the said Congress Construction Company and your petitioner, Robinson Manufacturing Company, entered into a verbal agreement whereby your

said petitioner agreed to furnish and deliver f. o. b. Bremerton, Washington, certain sash, doors, window glass and other interior mill work to be used in the construction of said building and blacksmith shop known as Building No. 109 as the said navy yard known as the Puget Sound Navy Yard, State of Washington, in accordance with the plans and specifications of the Bureau of Yards & Docks of the United States, for the sum of Three Thousand Six Hundred Nine and no/100 Dollars (\$3609.00), an itemized statement of which said material so to be furnished and delivered is attached hereto and marked "Exhibit A", and made a part hereof.

Your petitioner further says that it furnished and delivered f. o. b. Bremerton, Washington, all the goods, wares and materials set forth in said "Exhibit A" and used in the said building and blacksmith shop building No. 109, and in all respects complied with the terms and conditions of said verbal contract; that all the material furnished by your petitioner was used in the prosecution of the work provided for in the aforesaid contract between the United States and the said Congress Construction Company; that the sum of Fifteen Hundred and no/100 Dollars (\$1500.00) has been paid on account thereof, as shown in "Exhibit A", but that the balance thereof amounting to Two Thousand One Hundred Nine and no/100 Dollars (\$2109.00) has not been paid; that the said Congress Construction Company, the said Crowen and Reynolds, are indebted to your petitioner therefor in the sum of Two Thousand One Hundred Nine and no/100 Dollars (\$2109.00) with interest from December 12th, 1906; that the said sum is now due, owing and unpaid, and there has been long and unreasonable delay in the payment thereof; that said Congress Construction Company accepted its said work, and that the United States accepted the said building from said Congress Construction Company.

Wherefore, your petitioner plays for a judgment in its favor herein against the said defendant, Congress Construction Company, the said Peter F. Reynolds and said S. N. Crowen, sureties on said bond in the sum of Two Thousand One Hundred Nine and no/100 Dollars (\$2109.00) with interest thereon from the 12th day of December, 1906, for costs, and all proper relief.

ROBINSON MFG. CO.,
By C. D. FRATT, *Treasurer,*
Petitioner.

110 STATE OF WASHINGTON,
County of Snohomish, ss:

C. D. Fratt being first duly sworn, on oath, says that he is the secretary and treasurer of the Robinson Manufacturing Company, the petitioner herein; that he has read the above and foregoing petition and knows the contents thereof; that the matters and things therein contained are true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those, he believes them to be true.

C. D. FRATT.

Subscribed and sworn to before me, this 7th day of July, A. D. 1908.

[SEAL.]

J. E. HORAN,
Notary Public in and for the State of Washington,
Residing in Everett, Wash.

111

"EXHIBIT A."

Order No. 1330.

EVERETT, WASH., Jan. 20, '08.

Sold to Congress Construction Co., Bremerton, Wash.

Dec. 12, '06.

112 pcs.	11 : 8 wdo. stops.
44 "	5 : 4
12 "	4 : 4
112 "	3 : 10 sash stops.
224 "	4 : 8
112 "	3 : 10 sash stool.
224 "	8 : 11 " stops.
112 "	3 : 10
52 "	9 : 6 casg.
52 "	6 : 0
600 lin. casg.	
700 " "	
600 apron.	
600 stool.	
84 pcs.	9 : 6 casg.
84 "	6 : 0
4 "	6 : 6
4 "	6 : 0
2 "	18 : 0 stool.
4 "	6 : 0
4 "	16 : 0 stop.
2 "	14 : 0
6 "	12 : 0
8 "	7 : 3 door jambs.
2 "	3 : 1
44 wdo. frs.	5 : 2- $\frac{3}{4}$ x 11 : 7 O. M. wdos. 2- $\frac{3}{16}$.
12 "	4 : 2 x 11 : 7 ditto.
2 $\frac{1}{2}$ cir. top frs.	15 : 6- $\frac{1}{2}$ x 14 : 0 O. M. fr.
	for 1 cent. wdo. 6 : 7- $\frac{3}{8}$ x 14 : 0
	2 sd. " 3 : 5- $\frac{1}{4}$ x "
4 $\frac{1}{2}$ cir. top frs.	4 : 6 x 11 : 11- $\frac{3}{4}$ O. M. fr.
	for 4 : 2- $\frac{3}{4}$ x 11 : 7- $\frac{1}{2}$ O. M.
28 sect. frs. for 4 sash	3 : 8- $\frac{1}{8}$ x 8 : 10 O. M. 1/3/4.
	4 tops 3 : 8- $\frac{1}{8}$ x 4 : 8- $\frac{3}{4}$ 2- $\frac{3}{16}$.
8 pcs. jamb mld.	10 : 0 for doors.
4 " ditto	18 : 0
4 " "	20 : 0

44	wdos.	32	Lt.	5:2- $\frac{3}{8}$	x	11:7	2- $\frac{3}{16}$ "	glazed.		
12	"	"		4:2- $\frac{3}{8}$	x	11:7				
4	$\frac{1}{2}$	circ.	top	wdos.	4:2- $\frac{3}{8}$	x	11:7	O. M.	2- $\frac{3}{16}$	32 Lt.
2	sec.	top	wdos.	6:7- $\frac{1}{2}$	x	14:4- $\frac{3}{4}$	ditto		60	"
4	ditto			3:5- $\frac{1}{4}$	x	ditto			26	"
112	sash	3:8- $\frac{1}{8}$	2- $\frac{3}{16}$	O. M.	9	Lt.	glazed.			
112	"	3:8- $\frac{1}{8}$	x	3:10	1- $\frac{3}{4}$	18	"	"		
4	pcs.	doors	12:0	15:11	3"	glazed	O. M.	Pt.		
2	"	"	18:10	17:8- $\frac{3}{4}$	ditto.					
2	"	"	18:10	20:0- $\frac{3}{8}$	"					
8	pcs.	2- $\frac{1}{4}$	x	8	16:0	door	jbs. & mlds.	primed.		
4	"	"	x	8	18:0					
4	"	"		20:6					Contract.....	3600.00
	Account of	3"	fig.	hds.....						9.00
										<hr/> 3609.00

Credits:

Oct.	19,	'06	By	ck.....	300.00	
Feb.	20,	'07	"	.....	300.00	
Mar.	7,	'07	"	.....	400.00	
May	23,	'07	"	.....	500.00	
					<hr/> 1500.00	
To balance.....					<hr/> \$2109.00	

112

Bond.

(NOTE.—This form to be used when Bond is not given by a corporation authorized to act as sole surety.)

Know all men by these presents, That we, Congress Construction Co., principal, and S. N. Crowen, of Chicago, Ill., Peter F. Reynolds, of Chicago, Ill., as sureties, are held and firmly bound unto the United States of America in the penal sum of Eighteen thousand dollars (\$18,000.00) *dollars*, to be paid to the said United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, assigns and representatives, jointly and severally, by these presents.

Signed, sealed with our seals, and dated this fifth day of April, A. D. 1906.

Conditions.

- 1 The condition of the above bond is such, that if the said above bounden principal
- 2 Congress Construction Co.
- 3 his or their heirs, successors, executors or administrators shall well and truly, and in a
- 4 satisfactory manner, fulfill and perform the stipulations of the contract hereto annexed,
- 5 entered into with the Chief of the Bureau of Yards and Docks, acting under the directions

- 6 of the Secretary of the Navy, for and in behalf of the United
 States, and shall conform in
 7a all respects to said contract, as it now exists or may be modified
 by the parties thereto,
 8 according to its terms, and to the plans and specifications at-
 tached thereto and forming a
 9 part thereof, and to the satisfaction of the said Chief of the Bu-
 reau of Yards and Docks, and
 10 shall promptly make payments to all persons supplying him or
 them labor and materials in
 113
 11 the prosecution of the work provided for in the aforesaid con-
 tract, then this obligation to
 12 be void and of no effect; otherwise to remain in full force and
 virtue.

(Signed)

CONGRESS CONSTRUCTION
 CO., [SEAL.]
 Per FRED A. S. BRITTEN, Sec'y.
 S. N. CROWEN. [SEAL.]
 PETER F. REYNOLDS. [SEAL.]

Signed, Sealed and Delivered in Presence of—
 ————

Justification of the Sureties.

STATE OF ILLINOIS,
 County of Cook, ss:

I, S. N. Crowen, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand (\$20,000) dollars over and above all my debts and liabilities.

(Signed)

S. N. CROWEN.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
 Notary Public.

STATE OF ILLINOIS,
 County of Cook, ss:

I, Peter F. Reynolds, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand dollars (\$20,000.00) over and above all my debts and liabilities.

(Signed)

PETER F. REYNOLDS.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
 Notary Public.

114

Certificate.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Mark A. Foote, United States Commissioner for said district, do hereby certify that S. N. Crowen and Peter F. Reynolds, the sureties above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

(Signed)

[SEAL.]

MARK A. FOOTE,
U. S. Commissioner, N. D. of Ill.
 (Official title.)

*The Justification of the Sureties to be sworn to before a notary public or other officer authorized to administer oaths.

†The Certificate to be signed by any United States Officer.

(Endorsed:) Filed July 16, 1908, H. S. Stoddard, Clerk.

115 And on the same day to-wit: the sixteenth day of July, 1908, come Aug. Weiffenbach, doing business under the name of Seattle Cornice Works by his attorneys and filed in the clerk's office of said court in said entitled cause a certain Intervening Petition in words and figures following to-wit:

116 *Intervening Petition of Aug. Weiffenbach, Doing Business Under the Name of Seattle Cornice Works.*

In the Circuit Court of the United States for the Northern District of Illinois.

29114.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY et al.

Your petitioner, Aug. Weiffenbach, doing business under the name of Seattle Cornice Works, by leave of court first had and obtained, files this, his petition, and respectfully represents unto the court that he is a resident of Seattle, in the State of Washington; that he is engaged in the business of manufacturing cornices, ceilings and metal sash, and all kinds of roofing and sheet iron and tin work:

That on or about the 14th day of April, 1903, the plaintiff, United States, by the Chief of Bureau of Yards & Docks, acting under the direction of the Secretary of the Navy and the defendant Congress Construction Company, entered into a contract in writing, whereby the said Congress Construction Company agreed to provide,

furnish and deliver, at its own risk and expense, at the United States navy yard at Bremerton, Washington, all the necessary materials, labor, tools and appliances for the construction of a boiler and blacksmith shop building at said navy yard, in strict compliance with and subject to all the conditions and requirements of certain plans and specifications appended thereto, which said contract is the same contract referred to in plaintiff's declaration herein.

That on or about the 5th day of April, 1906, said Congress Construction Company, and the other defendants, S. N. Crowen
117 and Peter F. Reynolds, executed and delivered to said United States of America their certain bond in writing in the sum of Eighteen Thousand (\$18,000) Dollars, whereby they agreed, among other things, to promptly make payments to all persons supplying the said Congress Construction Company with labor and materials in the prosecution of the work provided for in the aforesaid contract, which said bond is the same referred to in plaintiff's declaration herein, a copy of which is hereto attached marked "Exhibit B".

That thereafter the said United States of America, said Congress Construction Company, S. N. Crowen and Peter F. Reynolds, entered into a supplementary agreement whereby some of the terms of said contract were in some respects modified.

That on or about the first day of September, 1906, the said Congress Construction Company and your petitioner, Aug. Weiffenbach under the name of Seattle Cornice Works, entered into an agreement in writing whereby your said petitioner agreed to furnish all the labor and materials required in the construction of said boiler and blacksmith shop known as Building No. 109 at the said navy yard known as the Puget Sound Navy Yard, State of Washington, in accordance with the plans and specifications of the Bureau of Yards & Docks of the United States, for the sum of \$6857.24. A copy of the said contract is attached hereto marked "Exhibit A" and made a part hereof.

118 Your petitioner further says that he furnished and delivered f. o. b. Bremerton, Washington, all the materials and labor required in the construction of said boiler and blacksmith shop building No. 109, and in all respects complied with all the terms and conditions of said contract; that all the labor and material provided for in said contract which was furnished by your petitioner was used in the prosecution of the work provided for in the aforesaid contract between the United States and the said Congress Construction Company; that the sum of \$3000.00 has been paid on account thereof, but that the balance thereof, amounting to \$3857 24/100, has not been paid; that the said Congress Construction Company, the said Crowen and said Reynolds are indebted to your petitioner therefor in the sum of \$3857 24/100, with interest from the 20 day of July, 1907; that the said sum is now due, owing and unpaid; that there has been long and unreasonable delay in the payment thereof; that the said Congress Construction Company accepted its said work, and that the United States accepted the said building from the said Congress Construction Company.

Your petitioner further states that he has heretofore, to-wit, on

July 30th, 1907, assigned to the Crane Company of Chicago, Illinois, for a good and valuable consideration, all his rights and interests in the balance due him from the said Congress Construction Company, and that the said Crane Company is entitled to the balance due on said contract.

Wherefore, your petitioner prays for a judgment in his favor for the use of the said Crane Company against the said
 119 defendant, Congress Construction Company, the said Peter F. Reynolds and the said S. N. Crowen, sureties on said bond, in the sum of \$3857 24/100, with interest thereon from the 20 day of July, 1907, for costs and all proper relief.

AUG. WEIFFENBACH,

*Doing Business Under the Name
 Seattle Cornice Works, Petitioner.*

119½ STATE OF WASHINGTON,
 County of King, ss:

Aug. Weiffenbach being duly sworn, deposes and says, that he is the petitioner herein, that he has read the above and foregoing petition and knows the contents thereof; that the matter and things therein contained are true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those he believes them to be true.

AUG. WEIFFENBACH.

Subscribed and sworn to before me, this 8th day of July, A. D. 1908.

[SEAL.]

F. M. ROBERTS,
Notary Public.

120

EXHIBIT A.

This agreement made this 1st day of September, 1906, between the Seattle Cornice Works, of Seattle, Washington, party of the first part, and Congress Construction Company, of Chicago, Illinois, party of the second part.

For and in consideration of the sum hereinafter mentioned, the said party of the first part hereby agree to furnish all labor and materials required in the roofing, sheet metal, etc., for Boiler and Blacksmith Shop Building No. 109 for Steam Engineering at the U. S. Navy Yard, Puget Sound, Washington, in accordance with plans and specifications prepared therefore by Mordicai T. Endicott, Chief of the Bureau of Yards and Docks, Navy Department Washington.

It is further mutually agreed and understood that the said party of the first part is to furnish all such labor and materials under this contract as is specifically called for under specifications heading "Roofing and Sheet Metal Work" on page ten of said specification and including items 130 to 139 inclusive, excepting where same is modified or changed or substituted for in item four page eleven of

said specifications, but not including the painting on the outside of tin roofing and sheet metal cornice work, under heading "Form of Proposals".

It is further mutually agreed and understood that the said party of the first part will furnish the aforesaid labor and material as required by the said party of the second part for incorporation in the said building construction so as to cause no delay to other craftsmen in the premises, and the said party of the first part agrees to have at all times a sufficient number of workmen and material in the premises so as to properly complete this contract within thirty

121 days after notification of the building readiness to receive his material, as time is the essence of this contract, and the party of the second part is subject to a penalty by the U. S. Government for the non-completion of this building in a stipulated time, and the said party of the first part therefore hereby agrees to allow a deduction from his contract for any liquidated damages which the U. S. Government may see fit to deduct from the contract of the said party of the second part on account of any delay sustained or occasioned through the action of the party of the first part.

It is further agreed and understood that all labor and materials delivered and installed under this contract are to be subject to the approval and acceptance of the Government Superintendent in charge.

For the above mentioned labor and material the said party of the second part agrees to pay the said party of the first part the sum of Sixty-eight hundred fifty-seven dollars and twenty-four cents (\$6857.24), which amount is to be paid at the rate of Ninety Percent (90%) upon the proportionate amount (of this entire contract) of labor and material in place and accepted by the Government's representative, to be paid as specified in items 28, page 3, specification No. 1472, and the balance or ten percent (10%) is to be paid within thirty days after the completion of this contract and the acceptance of same by the aforesaid U. S. Government representative.

It is further agreed and understood that an extra amount of Three hundred seventy-five dollars (\$375.00) is to be paid to the party of the first part by the said party of the second part if the interior corrugated galvanized steel partitions called for in plans and specifications are made a part of this contract, and the in-
122 corporation of same into this contract is to in no way affect the aforesaid conditions, excepting in the additional payment of \$375.00, which corrugated iron the party of the first part agree to install within thirty days after receiving notice to proceed with same.

It is further agreed and understood that the said party of the first part is to furnish and make payable to the said party of the second part a surety company bond in amount \$2500.00 for the faithful performance of the covenance of this contract.

In witness whereof we have this 1st day of September, 1906, set our hands and seals.

CONGRESS CONSTRUCTION CO.,
By FRED A. BRITTEN *Sec'y.*

123

Bond.

(NOTE.—This form to be used when Bond is not given by a corporation authorized to act as sole surety.)

Know all men by these presents, That we, Congress Construction Co., principal, and S. N. Crowen, of Chicago, Ill., Peter F. Reynolds, of Chicago, Ill., as sureties, are held and firmly bound unto the United States of America in the penal sum of Eighteen thousand dollars (\$18,000.00) dollars, to be paid to the said United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, assigns and representatives, jointly and severally, by these presents.

Signed, sealed with our seals, and dated this fifth day of April, A. D. 1906.

Conditions.

- 1 The condition of the above bond is such, that if the said above bounden principal
- 2 Congress Construction Co.
- 3 *his or* their heirs, successors, executors or administrators shall well and truly, and in a
- 4 satisfactory manner, fulfill and perform the stipulations of the contract hereto annexed,
- 5 entered into with the Chief of the Bureau of Yards and Docks, acting under the directions
- 6 of the Secretary of the Navy, for and in behalf of the United States, and shall conform in
- 7a all respects to said contract, as it now exists or may be modified by the parties thereto,
- 8 according to its terms, and to the plans and specifications attached thereto and forming a
- 9 part thereof, and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and
- 10 shall promptly make payments to all persons supplying *him or* them labor and materials in
- 124
- 11 the prosecution of the work provided for in the aforesaid contract, then this obligation to
- 12 be void and of no effect; otherwise to remain in full force and virtue.

(Signed)

CONGRESS CONSTRUCTION
CO., [SEAL.]
Per FRED A. S. BRITTEN, Sec'y.
S. N. CROWEN. [SEAL.]
PETER F. REYNOLDS. [SEAL.]

Signed, Sealed and Delivered in Presence of—
— — —

Justification of the Sureties.

STATE OF ILLINOIS,
County of Cook, ss:

I, S. N. Crowen, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand (\$20,000) dollars over and above all my debts and liabilities.

(Signed)

S. N. CROWEN.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

I, Peter F. Reynolds, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand dollars (\$20,000.00) over and above all my debts and liabilities.

(Signed)

PETER F. REYNOLDS.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
Notary Public.

125

Certificate.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Mark A. Foote, United States Commissioner for said district, do hereby certify that S. N. Crowen and Peter F. Reynolds, the sureties above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

(Signed)

[SEAL.]

MARK A. FOOTE,
U. S. Commissioner, N. D. of Ill.
(Official title.)

*The Justification of the Sureties to be sworn to before a notary public or other officer authorized to administer oaths.

†The Certificate to be signed by any United States Officer.

(Endorsed:) Filed July 16, 1908, H. S. Stoddard, Clerk.

126

And afterwards to-wit: on the eighteenth day of July, 1908, come the Martin Gravel Company by its attorneys and filed in the clerk's office of said Court in said entitled cause its certain Intervening Petition in words and figures following to-wit:

127 *Intervening Petition of Martin Gravel Company.*

In the Circuit Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA

vs.

CONGRESS CONSTRUCTION COMPANY et al.

Your petitioner, Martin Gravel Company, respectfully represents unto the Court:

That this petition or claim is filed herein by leave of court first had and obtained.

That petitioner is a corporation engaged in the business of handling, selling and dealing in gravel and kindred lines.

That on or about the 14th day of April, 1906, the plaintiff, United States, by the Chief of Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy, and the defendant Congress Construction Company, entered into a contract in writing whereby the said Congress Construction Company agreed to provide, furnish and deliver, at its own risk and expense, at the United States navy yard at Bremerton, Washington, all the necessary materials, labor, tools and appliances for the construction of a boiler and blacksmith shop building at said navy yard, in strict accordance with and subject to all the conditions and requirements of certain plans and specifications appended thereto; which said contract is the same contract referred to in plaintiff's declaration herein.

128 That on or about the 5th day of April, 1906, said Congress Construction Company, and the other defendants, S. N. Crowen and Peter F. Reynolds, executed and delivered to said United States of America their certain bond in writing in the sum of Eighteen Thousand (\$18,000) Dollars, whereby they agreed, among other things, to promptly make payments to all persons supplying the said Congress Construction Company with labor and materials in the prosecution of the work provided for in the aforesaid contract, which said bond is the same referred to in plaintiff's declaration herein. A copy of said bond is attached hereto and made a part hereof, marked "Exhibit B."

That thereafter the said United States of America, said Congress Construction Company, S. N. Crowen and Peter F. Reynolds, entered into a supplementary agreement whereby some of the terms of said contract were in some respects modified.

That said defendant Congress Construction Company is indebted to the petitioner for goods, wares and merchandise sold and delivered by petitioner to the said defendant at the special instance and request of said defendant, in the sum of Two Hundred Fifty-three (\$253) Dollars, with interest thereon from the 24th day of September, 1907, a bill of particulars of which is attached hereto and made a part hereof, marked "Exhibit A."

That said goods, wares and merchandise mentioned in said bill

of particulars were furnished for, delivered to and used in and about the construction of said boiler and blacksmith shop building No. 109 at the said United States navy yard at Bremerton, Washington; that all of same were used in the prosecution of the work provided for in the aforesaid contract between the United States and said Congress Construction Company; that the same have not been paid for; that said sum is now due, owing and unpaid, and there has been long and unreasonable delay in the payment thereof; that said Congress Construction Company accepted said materials and the said United States accepted the said building from said Congress Construction Company, by reason of all of which the said S. N. Crowen and Peter F. Reynolds, together with said Congress Construction Company, have been and are now liable on the aforesaid bond for the amount due your petitioner as aforesaid.

Wherefore, petitioner prays for a judgment in its favor herein against the said defendant Congress Construction Company and the said Peter F. Reynolds and S. N. Crowen, sureties on said bond, in the sum of Two Hundred Fifty-three (\$253) Dollars, with interest thereon from the 25th day of September, 1907, for costs, and all proper relief.

MARTIN GRAVEL CO.,
By W. B. MARTIN, *Pres't, Petitioner.*

130 STATE OF WASHINGTON,
County of King, ss:

W. B. Martin, being first duly sworn, on oath says that he is President of the Martin Gravel Company, petitioner herein; that he has read the above and foregoing petition and knows the contents thereof; that the matters and things therein stated are true of his own knowledge, except as to those stated on information and belief, and as to those he believes them to be true.

W. B. MARTIN.

Subscribed and sworn to before me, this 9th day of July, 1908.

[SEAL.]

LOREN GRINSTEAD,
*Notary Public in and for the State of Washington,
Residing at Seattle, King County, Therein.*

CASTLE, WILLIAMS, LONG & CASTLE,
Solr's for Petitioner.

131

EXHIBIT "A."

SEATTLE, WASH., January 1, 1908.

Office, Foot of King St.

Congress Construction Co. Bought of Martin Gravel Company,
Dealers in Gravel, Sand, Granolithic, and Ship Ballast.

South Bunker, Foot of King St. North Bunker, Foot of Bay Street.
Phone, Main 2224. Phone, Queen Anne 430.

Independent 91.

Bremerton, Wn.

1906.

April —. 150 CW Gravel F. O. B. Bremerton Wn.
75 " Sand

225 @ 90..... 202 50
1 day's scow rent..... 9 00
Return tow..... 15.00

May 16. 40 CW Sand
75 " Gravel

115 @ 90..... 103.50
Return tow..... 15.00

24. 85 CW Gravel
45 " Sand

130 @ 90..... 117.00
Return tow..... 15.00

June 3. 30 CW Sand
90 " Gravel

26. 70 " Sand
55 " Gravel

245 CW @ 90..... 220 50
2 Extra tow return..... 30

July 25. 35 CW Sand
50 " Gravel

24. 50 " Sand
75 " Gravel

210 @ 90..... 189.00
2 days' scow rent..... 10.00
2 extra tows..... 30.00

1907.

Feb'y 24. 45 CW Sand
78 " Gravel

123 142.50
3 day-' scow rent..... 18.00

Aug. 20. By cash 160.50
Oct. 20. " " 200.00
Dec. 20. " " 200.00
May 20. " " 200.00
..... 150.00

750.00

Balance due..... \$367.00

132

EXHIBIT B.

Bond.

(NOTE.—This form to be used when Bond is Not given by a corporation authorized to act as sole surety.)

Know all men by these presents, That we, Congress Construction Co., principal, and S. N. Crowen, of Chicago, Ill., Peter F. Reynolds, of Chicago, Ill., as sureties, are held and firmly bound unto the United States of America in the penal sum of Eighteen thousand dollars (\$18,000.00) dollars, to be paid to the said United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, assigns and representatives, jointly and severally, by these presents.

Signed, sealed with our seals, and dated this fifth day of April, A. D. 1906.

Conditions.

- 1 The condition of the above is such, that if the said above bounden principal
- 2 Congress Construction Co.
- 3 *his* or their heirs, successors, executors or administrators shall well and truly, and in a
- 4 satisfactory manner, fulfill and perform the stipulations of the contract hereto annexed,
- 5 entered into with the Chief of the Bureau of Yards and Docks, acting under the directions
- 6 of the Secretary of the Navy, for and in behalf of the United States, and shall conform in
- 7a all respects to said contract, as it now exists or may be modified by the parties thereto,
- 8 according to its terms, and to the plans and specifications attached thereto and forming a
- 9 part thereof, and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and
- 10 shall promptly make payments to all persons supplying *him* or them labor and materials in
- 133
- 11 the prosecution of the work provided for in the aforesaid contract, then this obligation to
- 12 be void and of no effect; otherwise to remain in full force and virtue.

(Signed) CONGRESS CONSTRUCTION CO. [SEAL.]

Per FRED A. S. BRITTEN, *Sec'y.*

S. N. CROWEN.

PETER F. REYNOLDS.

[SEAL.]

[SEAL.]

Signed, Sealed and Delivered in Presence of—

Justification of the Sureties.

STATE OF ILLINOIS,

County of Cook, ss:

I, S. N. Crowen, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand (\$20,000) dollars over and above all my debts and liabilities.

(Signed)

S. N. CROWEN.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]

Notary Public.

STATE OF ILLINOIS,

County of Cook, ss:

I, Peter F. Reynolds, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand dollars (\$20,000.00) over and above all my debts and liabilities.

(Signed)

PETER F. REYNOLDS.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]

Notary Public.

134

Certificate.

UNITED STATES OF AMERICA,

Northern District of Illinois, ss:

I, Mark A. Foote, United States Commissioner for said district, do hereby certify that S. N. Crowen and Peter F. Reynolds, the sureties above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

(Signed)

[SEAL.]

MARK A. FOOTE,

U. S. Commissioner, N. D. of Ill.

(Official title.)

* The Justification of the Sureties to be sworn to before a notary public or other officer authorized to administer oaths.

† The Certificate to be signed by any United States Officer.

(Endorsed:) Filed July 18, 1908. H. S. Stoddard, Clerk.

135

And on the same day to-wit: the eighteenth day of July, 1908, come Port Orchard Route, by its attorneys and filed in the Clerk's office of said Court in said entitled cause its certain Intervening Petition in words and figures following to-wit:

136

Petition of Port Orchard Route.

In the Circuit Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA

vs.

CONGRESS CONSTRUCTION COMPANY et al.

Your petitioner, Port Orchard Route, respectfully represents unto the Court:

That this petition or claim is filed herein by leave of court first had and obtained.

That petitioner is a corporation engaged in the transportation business.

That on or about the 14th day of April, 1906, the plaintiff, United States, by the Chief of Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy, and the defendant Congress Construction Company, entered into a contract in writing, whereby the said Congress Construction Company agreed to provide, furnish and deliver, at its own risk and expense, at the United States navy yard at Bremerton, Washington, all the necessary materials, labor, tools and appliances for the construction of a boiler and blacksmith shop building at said navy yard, in strict accordance with and subject to all the conditions and requirements of certain plans and specifications appended thereto; which said contract is the same contract referred to in plaintiff's declaration herein.

137 That on or about the 5th day of April, 1906, said Congress Construction Company, and the other defendants, S. N. Crowen, and Peter F. Reynolds, executed and delivered to said United States of America their certain bond in writing in the sum of Eighteen Thousand (\$18,000) Dollars, whereby they agreed, among other things, to promptly make payments to all persons supplying the said Congress Construction Company with labor and materials in the prosecution of the work provided for in the aforesaid contract, which said bond is the same referred to in plaintiff's declaration herein. A copy of said bond is attached hereto and made a part hereof, marked "Exhibit B."

That thereafter the said United States of America, said Congress Construction Company, S. N. Crowen and Peter F. Reynolds, entered into a supplementary agreement whereby some of the terms of said contract were in some respects modified.

That the defendant Congress Construction Company is indebted to the petitioner in the sum of One Hundred and Ninety-three and 55/100 (\$193.55) Dollars, with interest thereon since June 13, 1907, for goods, wares and merchandise transported and hauled by your petitioner, at the special instance and request of the defendant, a bill of particulars of which is attached hereto and made a part hereof, marked "Exhibit A"; that said goods, wares and merchandise so transported and hauled by petitioner were used in and about the

construction of said boiler and blacksmith shop known as building No. 109, and the same were so transported and hauled in order to construct the said building, and all of the said work was done in the

prosecution of the work provided for in the aforesaid contract between the United States and the said Congress Construction Company; that the said account has not been paid; that the same is now due, owing and unpaid, and there has been long and unreasonable delay in the payment thereof; that the said Congress Construction Company accepted the said labor and material of your petitioner, and the said United States accepted the said building from the said Congress Construction Company.

Wherefore, petitioner prays for a judgment in its favor against the said defendant Congress Construction Company and the said Peter F. Reynolds and S. N. Crowen, sureties on said bond, in the sum of One Hundred Ninety-three and 55/100 (\$193.55) Dollars, with interest thereon from June 13, 1907, for costs, and all proper relief.

PORT ORCHARD ROUTE,
By W. B. KENNEDY, *Petitioner.*

139 STATE OF WASHINGTON,
County of King, ss:

W. B. Kennedy, being first duly sworn, on oath says that he is President of Port Huron Route, petitioner herein; that he has read the above and foregoing petition and knows the contents thereof; that the matters and things therein stated are true of his own knowledge, except as to those stated on information and belief, and as to those he believes them to be true.

W. B. KENNEDY.

Subscribed and sworn to before me, this 9th day of July, 1908.

[SEAL.]

LOREN GRINSTEAD,

Notary Public in and for the State of Washington,

Residing at Seattle, King County, Therein.

CASTLE, WILLIAMS, LONG & CASTLE,
Sol'rs for Petitioner.

140 SEATTLE, WASH., Oct. 31st, 1907.

Congress Construction Co., Bremerton and Chicago, Dr. to Port Orchard Route.

1907.																	
Jan.	21.	Freight.....															
Mar.	2.	"	4.40	(5)	Freight..	20.00	(16)	Freight..	18.47..								12.50
	19.	"	20.00	(22)	"	5.25											42.87
Apr.	5.	"	40.00	(10)	"	12.95	(10)	"	1.75..								2.25
	19.	"	25.00	(22)	"	5.78	(24)	"	.95..								54.70
	29.	"															31.73
May	1.	"	3.50	(16)	"	.70	(7)	"	12.50 }								.25
	17.	"	3.85	(27)	"	1.25		(8)	Fr't.....	.70 }							17.40
June	1.	"	1.20	(7)	"	.50	(10)	Freight..	.60..								5.10
	13.	"	.75	(14)	"	.35	(15)	"	.35..								2.30
																	1.45

\$193.55

141

EXHIBIT B.

Bond.

(NOTE.—This form to be used when Bond is Not given by a corporation authorized to act as sole surety.)

Know all men by these presents, That we, Congress Construction Co., principal, and S. N. Crowen, of Chicago, Ill., Peter F. Reynolds, of Chicago, Ill., as sureties, are held and firmly bound unto the United States of America in the penal sum of Eighteen thousand dollars (\$18,000.00) *dollars*, to be paid to the said United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, assigns and representatives, jointly and severally, by these presents.

Signed, sealed with our seals, and dated this fifth day of April, A. D. 1906.

Conditions.

- 1 The condition of the above bond is such, that if the said above bounden principal
- 2 Congress Construction Co.
- 3 *his or* their heirs, successors, executors or administrators shall well and truly, and in a
- 4 satisfactory manner, fulfill and perform the stipulations of the contract hereto annexed,
- 5 entered into with the Chief of the Bureau of Yards and Docks, acting under the directions
- 6 of the Secretary of the Navy, for and in behalf of the United States, and shall conform in
- 7a all respects to said contract, as it now exists or may be modified by the parties thereto,
- 8 according to its terms, and to the plans and specifications attached thereto and forming a
- 9 part thereof, and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and
- 10 shall promptly make payments to all persons supplying *him or* them labor and materials in
- 142
- 11 the prosecution of the work provided for in the aforesaid contract, then this obligation to
- 12 be void and of no effect; otherwise to remain in full force and virtue.

(Signed) CONGRESS CONSTRUCTION CO., [SEAL.]

Per FRED A. S. BRITTEN, *Sec'y.*

S. N. CROWEN.

PETER F. REYNOLDS.

[SEAL.]

[SEAL.]

Signed, Sealed and Delivered in Presence of—

Justification of the Sureties.

STATE OF ILLINOIS,
County of Cook, ss:

I, S. N. Crowen, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand (\$20,000) dollars over and above all my debts and liabilities.

(Signed)

S. N. CROWEN.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

I, Peter F. Reynolds, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand dollars (\$20,000.00) over and above all my debts and liabilities.

(Signed)

PETER F. REYNOLDS.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
Notary Public.

142½

Certificate.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Mark A. Foote, United States Commissioner for said district, do hereby certify that S. N. Crowen and Peter F. Reynolds, the sureties above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

(Signed)

[SEAL.]

MARK A. FOOTE,
U. S. Commissioner, N. D. of Ill.
(Official title.)

* The Justification of the Sureties to be sworn to before a notary public or other officer authorized to administer oaths.

† The Certificate to be signed by any United States Officer.

(Endorsed:) Filed July 18, 1908. H. S. Stoddard, Clerk.

143 And on to-wit: the twenty-third day of July, 1908, come Castle, Williams, Long & Castle and entered their appearance as solicitors for Port Orchard Route, a corporation, Martin Gravel

Company, a corporation, Pan-American Bridge Company, a corporation, Seattle Paint Company, a corporation, Denny-Renton Clay & Coal Company, a corporation, Hofius Steel & Equipment Company, a corporation, and International Fence & Fireproofing Company, a corporation, intervening petitioners in said cause.

Appearance of Castle, Williams, Long & Castle as Solicitors for Certain Intervening Petitioners.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Gen. No. 29114.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY et al.

We hereby enter our appearance as solicitors for Port Orchard Route, a corporation, Martin Gravel Company, a corporation, Pan-American Bridge Company, a corporation, Seattle Paint Company, a corporation, Denny-Renton Clay & Coal Company, a corporation, Hofius Steel & Equipment Company, a corporation, and International Fence & Fireproofing Company, a corporation, intervening petitioners in the above entitled cause.

CASTLE, WILLIAM-, LONG & CASTLE.

(Endorsed:) Filed July 23, 1908, H. S. Stoddard, Clerk.

144 And afterwards to-wit: on the twenty-third day of July 1908, come the International Fence & Fireproofing Company, by its attorneys and filed in the clerk's office of said Court in said entitled cause its certain Intervening Petition in words and figures following to-wit:

145 *Intervening Petition of International Fence and Fireproofing Company.*

In the Circuit Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY et al.

Your petitioner, International Fence & Fireproofing Company, respectfully represents unto the Court:

That this petition or claim is filed herein by leave of court first had and obtained.

That petitioner is a corporation engaged in the business of manufacturing and dealing in fireproofing fabrics, and kindred lines.

That on or about the 14th day of April, 1906, the plaintiff, United States, by the Chief of Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy, and the defendant Congress Construction Company, entered into a contract in writing whereby the said Congress Construction Company agreed to provide, furnish and deliver, at its own risk and expense, at the United States navy yard at Bremerton, Washington, all the necessary materials, labor, tools and appliances for the construction of a boiler and blacksmith shop building at said navy yard, in strict accordance with and subject to all the conditions and requirements of certain plans and specifications appended thereto; which said contract is the same contract referred to in plaintiff's declaration herein.

146 That on or about the 5th day of April, 1906, said Congress Construction Company, and the other defendants, S. N. Crowen and Peter F. Reynolds, executed and delivered to said United States of America their certain bond in writing in the sum of Eighteen Thousand (\$18,000.00) Dollars, whereby they agreed, among other things, to promptly make payments to all persons supplying the said Congress Construction Company with labor and materials in the prosecution of the work provided for in the aforesaid contract, which said bond is the same referred to in plaintiff's declaration herein. A copy of said bond is attached hereto and made a part hereof, marked "Exhibit B."

That thereafter the said United States of America, said Congress Construction Company, S. N. Crowen and Peter F. Reynolds, entered into a supplementary agreement whereby some of the terms of said contract were in some respects modified.

That said defendant Congress Construction Company is indebted to your petitioner for goods, wares and merchandise sold and delivered by petitioner to the said defendant, at the special instance and request of said defendant, in the sum of Seven Hundred Forty-three and 45/100 (743.45) Dollars, with interest thereon from February 27, 1907, a bill of particulars of which is attached hereto and made a part hereof, marked "Exhibit A."

That said goods, wares and merchandise mentioned in said bill of particulars were furnished for, delivered to and used in and about the construction of said boiler and blacksmith shop building No. 109 at the United States navy yard at Bremerton, Washington: that all of same were used in the prosecution of the work provided for

147 in the aforesaid contract between the United States and said Congress Construction Company; that the same have not been paid for; that said sum is now due, owing and unpaid, and there has been long and unreasonable delay in the payment thereof; that said Congress Construction Company accepted the materials and the said United States accepted the said building from said Congress Construction Company, by reason of all of which the said S. N. Crowen and Peter F. Reynolds, together with said Congress Construction Company, have been and are now liable on the aforesaid bond for the amount due your petitioner as aforesaid.

Wherefore, petitioner prays for a judgment in its favor herein against the said defendant Congress Construction Company and the said Peter F. Reynolds and S. N. Crowen, sureties on said bond, in the sum of Seven Hundred Forty-three and 45/100 (\$743.45) Dollars with interest thereon from February 27, 1906, for costs, and all proper relief.

INTERNATIONAL FENCE & FIREPROOFING
CO., *Petitioner,*
By CASTLE, WILLIAMS, LONG & CASTLE,
Its Solicitors.

148 STATE OF OHIO,
County of Franklin, ss:

L. W. Cargill, being first duly sworn, on oath says that he is President and General Manager of the International Fence & Fireproofing Company, a corporation, petitioner herein; that he has read the above and foregoing petition and knows the contents thereof; that the matters and things therein stated are true of his own knowledge, except as to those stated on information and belief, and as to those he believes them to be true.

L. W. CARGILL.

Subscribed and sworn to before me, this 20th day of July, 1908.
[SEAL.] AARON S. DU BOIS,
Notary Public.

149 EXHIBIT "A."
Statement.

COLUMBUS, OHIO, Jan. 15, 1908.

Congress Construction Co., Bremerton, Wash., to The International Fence & Fireproofing Co., Dr.

Terms: 30 days.

1906.			
Oct. 16.	To 3370 sq. ft. Cov. Fabric @ 3.25.....	\$109.63	
	Less fr't.....	18.00	
			91.63
" 31.	To 6370 sq. ft. 4 x 6 Fabric @ 3.25.....	207.03	
	Less fr't.....	48.82	
			158.21
Nov. 13.	To 2000 sq. ft. Fabric @ 3.25.....	65.00	
	Less fr't.....	15.99	
			49.01
Dec. 11.	To 3000 sq. ft. Fabric @ 3.25.....	97.50	
	Less fr't.....	24.00	
			73.50
Dec. 18.	To 2000 sq. ft. Fabric @ 3.25.....	65.00	
	Less fr't.....	15.90	
			49.10
1907.			
Jan. 11.	To 5000 sq. ft. Fabric @ 3.25.....	162.50	
	Less fr't.....	37.50	
			125.00
Feb. 27.	To 7600 sq. ft. Fabric @ 3.25.....	247.00	
	Less fr't.....	60.00	
			187.00
			733.45

150

EXHIBIT B.

Bond.

(NOTE.—This form to be used when Bond is not given by a corporation authorized to act as sole surety.)

Know all men by these presents, That we, Congress Construction Co., principal, and S. N. Crowen, of Chicago, Ill., Peter F. Reynolds, of Chicago, Ill., as sureties, are held and firmly bound unto the United States of America in the penal sum of eighteen thousand dollars (\$18,000.00) dollars, to be paid to the said United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, assigns and representatives, jointly and severally, by these presents.

Signed, Sealed with our seals, and dated this fifth day of April, A. D. 1906.

Conditions.

- 1 The condition of the above bond is such, that if the said above bounden principal
- 2 Congress Construction Co.
- 3 *his or their* heirs, successors, executors or administrators shall well and truly, and in a
- 4 satisfactory manner, fulfill and perform the stipulations of the contract hereto annexed,
- 5 entered into with the Chief of the Bureau of Yards and Docks, acting under the directions
- 6 of the Secretary of the Navy, for and in behalf of the United States and shall conform in
- 7 all respects to said contract, as it now exists or may be modified by the parties thereto,
- 8 according to its terms, and to the plans and specifications attached thereto and forming a
- 9 part hereof, and to the satisfaction of the said Chief of the Bu-
- 151 reau of Yards and Docks and
- 10 shall promptly make payments to all persons supplying *him or* them labor and materials in
- 11 the prosecution of the work provided for in the aforesaid contract, then this obligation to
- 12 be void and of no effect; otherwise to remain in full force and virtue.

CONGRESS CONSTRUCTION
CO.,

Per FRED A. BRITTEN, *Sec'y*. [SEAL.]

S. N. CROWEN. [SEAL.]

PETER F. REYNOLDS. [SEAL.]

Signed, Sealed and Delivered in presence of—

Justification of the Sureties.

STATE OF ILLINOIS,

County of Cook, ss:

I, S. N. Crowen, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the sum of twenty thousand (\$20,000.00) dollars over and above all my debts and liabilities.

(Signed)

S. N. CROWEN.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]

Notary Public.

STATE OF ILLINOIS,

County of Cook, ss:

I, Peter F. Reynolds, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am personally worth the
152 sum of twenty thousand dollars (\$20,000.00) over and above all my debts and liabilities.

(Signed)

PETER F. REYNOLDS.

†Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]

*Notary Public.**Certificate.*

UNITED STATES OF AMERICA,

Northern District of Illinois, ss:

I, Mark A. Foote, United States Commissioner for said district, do hereby certify that S. N. Crowen and Peter F. Reynolds the sureties above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

(Signed)

[SEAL.]

MARK A. FOOTE,

U. S. Commissioner, N. D. of Ill.

(Official title.)

*The Justification of the Sureties to be sworn to before a Notary Public or other officer authorized to administer oaths.

†The Certificate to be signed by any United States Officer.

(Endorsed:) Filed July 23, 1908, H. S. Stoddard, Clerk.

153 And afterwards to-wit: on the thirtieth day of September, 1908, come the Schwabacher Hardware Company, a corporation by its attorney and filed in the clerk's office of said Court in said entitled cause its certain Intervening Petition, in words and figures following to-wit:

Intervening Petition of Schwabacher Hardware Company.

In the Circuit Court of the United States for the Northern District of Illinois.

29114.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY et al.

Your petitioner, the Schwabacher Hardware Company, a corporation organized under the laws of the State of Washington, and doing business at Seattle, Washington, files this, its petition and respectfully represents unto the court that it is a resident of Seattle, in the State of Washington, that it is engaged in the business of furnishing building materials, hardware, iron, steel and ship chandlery.

That on or about the 14th day of April, 1906, the plaintiff United States, by the Chief of Bureau of Yards & Docks, acting under the direction of the Secretary of the Navy and the defendant, Congress Construction Company entered into a contract in writing, whereby the said Congress Construction Company agreed to provide furnish and deliver, at its own risk and expense, at the United States navy yard at Bremerton, Washington, all the necessary materials, labor, tools and appliances for the construction of a boiler and blacksmith shop building at said navy yard, in strict compliance with and subject to all the conditions and requirements of
154 certain plans and specifications appended thereto; which said contract is the same contract referred to in plaintiff's declaration herein.

That on or about the 5th day of April, 1906, said Congress Construction Company, and the other defendants, S. N. Crowen and Peter F. Reynolds, executed and delivered to said United States of America their certain bond in writing in the sum of eighteen thousand (\$18,000) dollars, whereby they agreed, among other things, to promptly make payments to all persons supplying the said Congress Construction Company with labor and materials in the prosecution of the work provided for in the aforesaid contract, which said bond is the same referred to in plaintiff's declaration herein. A copy of which is hereto attached marked "Exhibit B."

That thereafter the said United States of America said Congress Construction Company, S. N. Crowen and Peter F. Reynolds entered

into a supplementary agreement whereby some of the terms of said contract were in some respects modified.

That on or about the 1st day of May, 1906, the said Congress Construction Company and your petitioner The *The Schwabacher Hardware Co.*, entered into an agreement whereby your said petitioner agreed to furnish hardware, iron, steel and ship chandlery, materials required in the construction of said boiler and blacksmith shop known as Building No. 109 at the said Navy Yards, known as the Puget Sound Navy Yard, State of Washington, in accordance with the plans and specifications of the Bureau of Yards & Docks of the United States.

155 That thereafter this petitioner entered suit in the Municipal Court of the First District, at Chicago, in the State of Illinois, and on December 6, 1907, judgment for eleven hundred twenty eight dollars and one cent (\$1128.01) was awarded your petitioner together with costs amounting to nine dollars seventy five cents (\$9.75) and that no part of said judgment has been satisfied. As may more fully appear from the records of the Municipal Court of the City of Chicago for the First District.

Wherefore your petitioner prays for judgment in its favor for the amount of eleven hundred twenty eight dollars and one cent (\$1128.01) together with plaintiff's costs amounting to nine dollars seventy five cents (\$9.75) with interest from December 6th, 1907.

SCHWABACHER HARDWARE COMPANY,
By ROY C. GRAHAM, *Agent*.

CITY OF CHICAGO,
County of Cook, ss:

Roy C. Graham, being duly sworn, deposes and says that he is the agent for the Schwabacher Hardware Company, and that he has read the above and foregoing petition and knows the contents thereof; that the matters and things therein contained are true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those he believes them to be true.

ROY C. GRAHAM.

Subscribed and sworn to before me, this 29 day of September, 1908.

[SEAL.]

W. G. HAMILTON,
Notary Public.

156

Bond.

Know all men by these presents, That we, Congress Construction Co., principal, and S. N. Crowen, of Chicago, Ill., Peter F. Reynolds, of Chicago, Ill., as sureties, are held and firmly bound unto the United States of America in the penal sum of eighteen thousand dollars (\$18,000.00) *dollars*, to be paid to the said United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, assigns and representatives, jointly and severally, by these presents.

Signed, Sealed with our seals, and dated this fifth day of April,
A. D. 1906.

Conditions.

- 1 The condition of the above bond is such, that if the said above
- 2 bounden principal
- 3 Congress Construction Co.
- 4 *his* or their heirs, successors, executors or administrators shall
- 5 well and truly, and in a
- 6 satisfactory manner, fulfill and perform the stipulations of the
- 7 contract hereto annexed,
- 8 entered into with the Chief of the Bureau of Yards and Docks,
- 9 acting under the directions
- 10 of the Secretary of the Navy, for and in behalf of the United
- 11 States and shall conform in
- 12 all respects to said contract, as it now exists or may be modi-
- 13 fied by the parties thereto,
- 14 according to its terms, and to the plans and specifications at-
- 15 tached thereto and forming a
- 16 part thereof, and to the satisfaction of the said Chief of the
- 17 Bureau of Yards and Docks and
- 18 shall promptly make payments to all persons supplying *him* or
- 19 them labor and materials in
- 20 the prosecution of the work provided for in the aforesaid con-
- 21 tract, then this obligation to
- 22 be void and of no effect; otherwise to remain in full force and
- 23 virtue.

[SEAL.]
CONGRESS CONSTRUCTION CO., [L. S.]
Per FRED A. BRITTON, *Sec'y.* [L. S.]
S. N. CROWEN. [SEAL.] [L. S.]
PETER F. REYNOLDS. [SEAL.] [L. S.]

Signed, Sealed and Delivered in presence of—
— — —

Justification of the Sureties.

STATE OF ILLINOIS,

County of Cook, ss:

I, S. N. Crowen, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am pecuniarily worth the sum of twenty thousand (\$20,000.00) dollars over and above all my debts and liabilities.

S. N. CROWEN.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

I, Peter F. Reynolds, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am pecuniarily worth the sum of twenty thousand dollars (\$20,000.00) over and above all
158 my debts and liabilities.

PETER F. REYNOLDS.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
Notary Public.

Certificate.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Mark A. Foote, United States Commissioner for said district, do hereby certify that S. N. Crowen and Peter F. Reynolds the sureties above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

[SEAL.]

MARK A. FOOTE,
U. S. Commissioner, N. D. of Ill.
(Official title.)

(Endorsed:) Filed Sep. 30, 1908. H. S. Stoddard, Clerk.

159 And on the same day to-wit: the thirtieth day of September, 1908, come F. T. Crowe & Company by its attorneys and filed in the clerk's office of said court its certain Intervening Petition in words and figures following to-wit:

Intervening Petition of F. T. Crowe & Company.

In the Circuit Court of the United States for the Northern District of Illinois.

29114.

UNITED STATES OF AMERICA
vs.
CONGRESS CONSTRUCTION COMPANY et al.

Your petitioner, F. T. Crowe & Company, a corporation doing business in the City of Seattle, State of Washington, by leave of court first had and obtained, files this, its petition and respectfully represents unto the court that it is a resident of Seattle, in the State

of Washington, that it is engaged in the business of Builders' Supplies.

That on or about the 14th day of April, A. D. 1906, the plaintiff, United States, by the Chief of Bureau of Yards & Docks, acting under the direction of the Secretary of the Navy and the defendant, Congress Construction Company, entered into a contract in writing, whereby the said Congress Construction Company agreed to provide, furnish and deliver, at its own risk and expense, at the United States Navy Yard, at Bremerton, Washington, all the necessary materials, labor, tools and appliances for the construction of a boiler and blacksmith shop building at said Navy Yard, in strict compliance with and subject to all the conditions and requirements of certain plans and specifications appended thereto; which said contract is the same contract referred to in plaintiff's declaration herein.

That on or about the 5th day of April, 1906, said Congress Construction Company, and the other defendants, S. N. Crowen and Peter F. Reynolds, executed and delivered to said United States of America their certain bond in writing in the sum of eighteen thousand (\$18,000) dollars, whereby they agreed, among other things, to promptly make payments to all persons supplying the said Congress Construction Company with labor and materials in the prosecution of the work provided for in the aforesaid contract, which said bond is the same referred to in plaintiff's declaration herein, a copy of which is hereto attached marked "Exhibit B."

That thereafter the said United States of America — said Congress Construction Company, S. N. Crowen and Peter F. Reynolds, entered into supplementary agreement whereby some of the terms of said contract were in some respects modified.

That on or about the first day of July, 1906, the said Congress Construction Co., and your petitioner F. T. Crowe & Company, entered into an agreement whereby your said petitioner agreed to furnish all building material required in the construction of said boiler and blacksmith shop known as Building No. 109 at the said Navy yard known as the Puget Sound Navy Yard, State of Washington, in accordance with the plans and specifications of the Bureau of Yard- and Docks of the United States, for the sum of \$599.28 as per petitioner's "Exhibit C" hereto attached.

Your petitioner further says that *he* furnished and delivered f. o. b. Bremerton, Washington, all the building material required in the construction of said boiler and blacksmith shop building No. 109, and in all respects complied with all the terms and conditions of said contract; and that there is now due *them* after allowing all matters of set-offs and counter claims the sum of \$599.28. Wherefore, your petitioner prays for judgment in *their* favor for \$599.28, for costs and all proper relief.

F. T. CROWE & COMPANY,
By ROY C. GRAHAM.

STATE OF ILLINOIS,

County of Cook, ss:

Roy C. Graham, being duly sworn, deposes and says, that he is agent for the petitioner, F. T. Crowe & Company, that he has read the above and foregoing petition and knows the contents thereof, that the matters and things therein contained are true to the best of his knowledge and belief

ROY C. GRAHAM.

Subscribed and sworn to before me, this 29 day of September, 1908.

[SEAL.]

W. G. HAMILTON,
Notary Public.

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Bond.

Know all men by these presents, That we, Congress Construction Co., principal, and S. N. Crowen, of Chicago, Ill., Peter F. Reynolds, of Chicago, Ill., as sureties, are held and firmly bound unto the United States of America in the penal sum of eighteen thousand dollars (\$18,000.00) *dollars*, to be paid to the said United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, assigns and representatives, jointly and severally, by these presents.

Signed, Sealed with our seals, and dated this fifth day of April, A. D. 1906.

Conditions.

- 1 The condition of the above bond is such, that if the said above bounden principal
 - 2 Congress Construction Co.
 - 3 *his or* their heirs, successors, executors or administrators shall well and truly, and in a
 - 4 satisfactory manner, fulfill and perform the stipulations of the contract hereto annexed,
 - 5 entered into with the Chief of the Bureau of Yards and Docks, acting under the directions
 - 6 of the Secretary of the Navy, for and in behalf of the United States and shall conform in
 - 7 all respects to said contract, as it now exists or may be modified by the parties thereto,
 - 8 according to its terms, and to the plans and specifications attached thereto and forming a
 - 9 part hereof, and to the satisfaction of the said Chief of the Bureau thereof, and to the satisfaction of the said reau of Yards and Docks and
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- 10 shall promptly make payments to all persons supplying *him or* them labor and materials in
 - 11 the prosecution of the work provided for in the aforesaid contract, then this obligation to

12 be void and of no effect; otherwise to remain in full force and
virtue.

Per CONGRESS CONSTRUCTION CO., [SEAL.] [L. S.]
FRED A. BRITTON, *Sec'y.* [L. S.]
S. N. CROWEN. [SEAL.] [L. S.]
PETER F. REYNOLDS. [SEAL.] [L. S.]

Signed, Sealed and Delivered in presence of—

Justification of the Sureties.

STATE OF ILLINOIS,
County of Cook, ss:

I, S. N. Crowen, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am pecuniarily worth the sum of twenty thousand (\$20,000.00) dollars over and above all my debts and liabilities.

S. N. CROWEN.

Subscribed and sworn to before me, this fifth day of April, 1906.

MAYME BROWN, [SEAL.]
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

I, Peter F. Reynolds, of Chicago, Ill., one of the sureties named in the within bond, do swear that I am pecuniarily worth the sum of twenty thousand dollars (\$20,000.00).

164 *Certificate.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Mark A. Foote, United States Commissioner for said district, do hereby certify that S. N. Crowen and Peter F. Reynolds, the sureties above named, are personally known to me, and that, to the best of my knowledge and belief, each is pecuniarily worth, over and above all his debts and liabilities, the sum stated in the accompanying affidavit subscribed by him.

[SEAL.]

MARK A. FOOTE,
U. S. Commissioner, N. D. Ill.
(Official Title.)

"EXHIBIT C."

Bill.

CONGRESS CONSTRUCTION COMPANY et al.

vs.

F. T. CROWE & COMPANY, Debtor.

To building material used in the construction of boiler and blacksmith shop known as Building #109 at the Navy Yard known as the Puget Sound Navy Yard, State of Washington, \$599.28.

(Endorsed:) Filed Sep. 30, 1908. H. S. Stoddard, Clerk.

165 And afterwards to-wit: on the thirteenth day of February, 1909, being one of the days of the regular December term of said Court, 1908, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Judgment of February 13, 1909.

29114.

UNITED STATES OF AMERICA

vs.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN
and PETER F. REYNOLDS.

This cause having been duly brought on for argument upon the demurrer of the plaintiff to each of the pleas to the jurisdiction of the Court in abatement heretofore filed herein by defendants, S. N. Crowen and Peter F. Reynolds, and the Court having heard the arguments of counsel and being fully advised in the premises, and it appearing to the Court, now here, that the said pleas of said defendants, by them and each of them pleaded in abatement to the jurisdiction of the Court and the matters in said pleas contained, in manner and form as the same are therein pleaded are sufficient to show that this Court has no jurisdiction of this cause, and that the writ of summons issued in said cause should be quashed, therefore,

It is considered by the Court that plaintiff's demurrer to each of the said pleas in abatement to the jurisdiction of the court of said
166 S. N. Crowen and Peter F. Reynolds be and the same is hereby overruled; and it is further considered by the Court that plaintiff's said writ of summons issued herein be quashed for want of jurisdiction in this court to entertain, hear and determine this cause, and that said defendants S. N. Crowen and Peter F. Reynolds go hence without day; to which ruling of the court plaintiff and the intervenors herein each then and there duly objected and excepted to the said ruling of the Court.

And it further appearing to the Court that the defendant herein, Congress Construction Company, a corporation, has failed to appear or defend this suit, and it further appearing to the Court from the plaintiff's declaration, that this court has no jurisdiction of this cause, it is therefore considered by the Court that said defendant Congress Construction Company go hence without day; to which ruling of the Court plaintiff and the intervenors herein each then and there duly objected and excepted to the said ruling of the court.

And it further appearing to the court that Pan-American Bridge Company, a corporation; Denny-Renton Clay & Coal Company, a corporation; Port Orchard Route, a corporation; Martin Gravel Company, a corporation; Seattle Paint Company, a corporation; Hohus Steel & Equipment Company, a corporation; International Fence & Fireproofing Company, a corporation, Robinson Manufacturing Company, a corporation, August Weiffenbach, doing business as the Seattle Cornice Works, F. T. Crowe and Company, Swabacher Hardware Company, Western Hardware and Metal Company have each filed their intervening petitions herein; and it further appearing to the Court from the allegations contained in plaintiff's declaration and in said intervening petition, and each of them, that this court has no jurisdiction of this cause, it is therefore considered by the Court that said intervening petitions, and each and all of them, be and the same are hereby dismissed for want of jurisdiction; to which ruling of the Court the intervenors herein each then and there duly objected and excepted to the said ruling of the Court.

168 And on to-wit: the eleventh day of May, 1909, there was filed in the clerk's office of said court in said entitled cause a certain Certificate of Jurisdiction Question in words and figures following to-wit:

Certificate of Jurisdiction Question.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States in and for said District.

No. 29114.

UNITED STATES OF AMERICA
vs.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN
and PETER F. REYNOLDS.

Certificate of Circuit Court for the Northern District of Illinois, Eastern Division, to the Supreme Court of the United States, under Section 5 of the Act of March 3rd, 1891.

In the above entitled cause I hereby certify that the judgment of dismissal herein made is based solely on the ground that this Court

is without jurisdiction to entertain and determine said cause, and that the declaration and intervening petitions herein, in my opinion disclose that the work performed and material furnished by said intervenors, were performed and furnished in the State of Washington, and not in the Northern District of Illinois; and that treating the demurrers to the pleas in abatement as presenting the question
 139 of jurisdiction, and acting also independently of the demurrer, and on the Court's own motion, the suit is dismissed only for the reasons above stated.—that is, that said work not having been performed and said materials not having been furnished in the Northern District of Illinois, there is consequently no jurisdiction in this Court to hear and determine this cause.

This certificate is made conformably to Act of Congress of March 3, 1891, and the pleadings and orders and judgment in said cause will be sent up as part of the proceedings, together with this certificate.

KENESAW M. LANDIS,

*District Judge, Holding the Circuit Court of
the United States for the Northern Dis-
trict of Illinois, Eastern Division.*

Dated the 13th day of March, A. D. 1909.

(Endorsed:) Filed May 11, 1909, H. S. Stoddard, Clerk.

170 And on to-wit: the eleventh day of May, 1909, come the United States of America, plaintiff by its attorney and said Pan-American Bridge Company, a corporation, Denny-Renton Clay & Coal Company, a corporation; Port Orchard Route, a corporation, Martin Gravel Company, a corporation, Seattle Paint Company, a corporation, Hofius Steel & Equipment Company, a corporation; International Fence & Fireproofing Company, a corporation, Robinson Manufacturing Company, a corporation; August Weiffenback, doing business as the Seattle Cornice Works; F. T. Crowe and Company, Schwabacher Hardware Company, Western Hardware & Metal Company, intervenors by their respective attorneys and filed in the clerk's office of said Court in said entitled cause their certain petition for writ of error in words and figures following to-wit:

Petition for Writ of Error.

UNITED STATES OF AMERICA,

Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States for said District.

No. 29114.

UNITED STATES OF AMERICA

vs.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN
and PETER F. REYNOLDS.

To the Honorable Judges of the United States Supreme Court:

Comes now the said United States of America, plaintiff, herein, and said Pan-American Bridge Company, a corporation, Denny-

Renton Clay & Coal Company, a corporation, Port Orchard Route, a corporation, Martin Gravel Company, a corporation; Seattle
 171 Paint Company, a corporation; Hofius Steel & Equipment Company, a corporation; International Fence & Fireproofing Company, a corporation, Robinson Manufacturing Company, a corporation; August Weiffenback, doing business as the Seattle Cornice Works; F. T. Crowe and Company, Schwabacher Hardware Company, Western Hardware & Metal Company, intervenors, by their respective attorneys and respectfully represent that there is manifest error committed to the injury of said plaintiff and said intervening petitioners by the final judgment pronounced in this case, in and by which final judgment the Circuit Court of the United States for the Northern District of Illinois, refused jurisdiction of the cause set forth in said plaintiff's declaration and the intervening petitions of said intervenors, and dismissed said suit and said intervening petitions for want of jurisdiction.

Wherefore, said plaintiff, United States of America, and said intervenors, Pan-American Bridge Company, a corporation, Denny-Renton Clay & Coal Company, a corporation, Port Orchard Route, a corporation, Martin Gravel Company, a corporation; Seattle Paint Company, a corporation, Hofius Steel & Equipment Company, a corporation, International Fence & Fireproofing Company, a corporation; Robinson Manufacturing Company, a corporation, August Weiffenback, doing business as the Seattle Cornice Works, F. T. Crowe Company, Schwabacher Hardware Company, Western Hardware & Metal Company, considering themselves aggrieved, pray for the allowance of a writ of error to the Supreme Court of the United
 172 States in said cause, as authorized by Section 5 of Act of Congress of the United States, approved March 3d, 1891, and pray this Honorable Court that said writ of error be allowed solely upon said question of jurisdiction, and that a transcript of so much of the record, proceedings and papers upon which said judgment was rendered as may be necessary to present said question of jurisdiction, duly authenticated, may be sent to the Supreme Court of the United States.

And said petitioners file herewith their assignment of errors in this behalf.

UNITED STATES OF AMERICA,
 By EDWIN W. SIMS, *U. S. Attorney*,
 PAN-AMERICAN BRIDGE COMPANY,
 DENNY-RENTON CLAY & COAL COMPANY,
 PORT ORCHARD ROUTE,
 MARTIN GRAVEL COMPANY,
 SEATTLE PAINT COMPANY,
 HOFIUS STEEL AND EQUIPMENT COMPANY,
 INTERNATIONAL FENCE AND FIRE-
 PROOFING COMPANY,
 By CASTLE, WILLIAMS, LONG & CASTLE,
Their Attorneys.

ROBINSON MANUFACTURING COMPANY,
 AUGUST WEIFFENBACK,
Doing Business as the Seattle Cornice Works,
 By ALDEN, LATHAM & YOUNG,
Their Attorneys.
 F. T. CROWE & COMPANY,
 SCHWABACHER HARDWARE COMPANY,
 By STEWART REED BROWN,
Their Attorney.
 WESTERN HARDWARE & METAL COMPANY,
 By FERGUSON & GOODNOW,
Its Attorneys.

(Endorsed:) Filed May 11, 1909, H. S. Stoddard, Clerk.

173 And on the same day to-wit: the eleventh day of May, 1909, come the United States of America, by its attorney and filed in the clerk's office of said court in said entitled cause its certain assignment of errors, in words and figures following to-wit:

Assignment of Errors by United States.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States in and for said District.

No. 29114.

UNITED STATES OF AMERICA
 vs.
 CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN
 and PETER F. REYNOLDS.

And now comes the said United States of America, as plaintiff in error by Edwin W. Sims, United States District Attorney and says that in the record and proceedings aforesaid there is manifest error in this to-wit:

First. The Circuit Court erred in overruling plaintiff's demurrer to the plea in abatement of defendant, S. N. Crowen.

Second. The Circuit Court erred in overruling plaintiff's demurrer to the plea in abatement of defendant, Peter F. Reynolds.

Third. The Circuit Court erred in quashing the summons and dismissing the suit as to said defendants, S. N. Crowen and Peter F. Reynolds for want of jurisdiction.

174 Fourth. The Circuit Court erred in dismissing plaintiff's suit as to Congress Construction Company for want of jurisdiction.

Fifth. The Circuit Court erred in dismissing the intervening petitions of Pan-American Bridge Company, Denny-Renton Clay & Coal Company, Port Orchard Route, Martin Gravel Company, Seattle Paint Company, Hofius Steel & Equipment Company, International Fence & Fireproofing Company, Robinson Manufacturing Company, August Weffenback, doing business as the Seattle Cornice Works, F. T. Crowe & Company, Schwabacher Hardware Company and Western Hardware & Metal Company, and each of them, for want of jurisdiction.

And the said plaintiff in error prays that the judgment and order aforesaid for the errors aforesaid, and other errors in the record and proceedings, be reversed, etc.

EDWIN W. SIMS,
Attorney for United States of America.

(Endorsed:) Filed May 11, 1909. H. S. Stoddard, Clerk.

175 And on the same day to-wit: the eleventh day of May, 1909, come the Pan-American Bridge Company, a corporation, Denny-Renton Clay & Coal Company, a corporation, Port Orchard Route, a corporation, Martin Gravel Company, a corporation, Seattle Paint Company, a corporation, Hofius Steel & Equipment Company, a corporation; International Fence & Fireproofing Company, a corporation, Robinson Manufacturing Company, a corporation, August Weffenback, doing business as the Seattle Cornice Works; F. T. Crowe and Company, Schwabacher Hardware Company and Western Hardware and Metal Company, Intervenor by their attorneys and filed in the clerk's office of said Court, their certain assignment of errors in words and figures following to-wit:

Assignment of Errors by Intervenor.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States in and for said District.

No. 29114.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN
and PETER F. REYNOLDS.

And now come the Pan-American Bridge Company, a corporation, Denny-Renton Clay & Coal Company, a corporation, Port Orchard Route, a corporation, Martin Gravel Company, a corporation, Seattle Paint Company, a corporation, Hofius Steel & Equipment Company, a corporation; International Fence & Fireproofing

Company, a corporation; Robinson Manufacturing Company,
 176 a corporation, August Weiffenback, doing business as the
 Seattle Cornice Works, F. T. Crowe and Company, Schwabacher Hardware Company and Western Hardware and Metal Company, as plaintiffs in error by their respective attorneys and say that in the record and proceedings aforesaid there is manifest error in this, to-wit:

First. The Circuit Court erred in overruling plaintiff's demurrer to the plea in abatement of defendant, S. N. Crowen.

Second. The Circuit Court erred in overruling plaintiff's demurrer to the plea in abatement of defendant Peter F. Reynolds.

Third. The Circuit Court erred in quashing the summons and dismissing the suit as to said defendants S. N. Crowen and Peter F. Reynolds for want of jurisdiction.

Fourth. The Circuit Court erred in dismissing plaintiff's suit as to Congress Construction Company for want of jurisdiction.

Fifth. The Circuit Court erred in dismissing the intervening petitions of Pan-American Bridge Company, Denny-Renton Clay & Coal Company, Port Orchard Route, Martin Gravel Company, Seattle Paint Company, Hofius Steel & Equipment Company, International Fence & Fireproofing Company, Robinson Manufacturing Company, August Weiffenback, doing business as the Seattle Cornice Works, F. T. Crowe & Company, Schwabacher Hardware Company and Western Hardware & Metal Company and each of them, for want of jurisdiction.

And the said plaintiffs in error pray that the judgment and order aforesaid for the errors aforesaid, and other errors in the record and proceedings, be reversed, etc.

ALDEN, LATHAM & YOUNG,

*Attorneys for Robinson Manufacturing Company,
 August Weiffenback, Doing Business as Seattle
 Cornice Works.*

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CASTLE, WILLIAMS, LONG & CASTLE,

*Attorneys for Pan-American Bridge Company,
 Denny-Renton Clay & Coal Company; Port
 Orchard Route; Martin Gravel Company; Seattle
 Paint Company; Hofius Steel & Equipment Com-
 pany; International Fence & Fireproofing Com-
 pany.*

STEWART REED BROWN,

*Attorney for F. T. Crowe and Company and
 Schwabacher Hardware Company.*

FERGUSON & GOODNOW,

Att'ys for Western Hardware and Metal Company.

(Endorsed:) Filed May 11, 1909. H. S. Stoddard, Clerk.

178 And on the same day to-wit: the eleventh day of May,
 1909, being one of the days of the regular December term
 of said court, 1908, in the record of proceedings thereof in said en-

titled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of May 11, 1909, Allowing Writ of Error.

29114.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY, a Corporation; S. N. CROWEN
and PETER F. REYNOLDS.

Upon consideration of the petition for writ of error to the Supreme Court of the United States, filed herein by United States of America, plaintiff, and Pan-American Bridge Company, a corporation, Denny-Renton Clay & Coal Company, a corporation, Port Orchard Route, a corporation, Martin Gravel Company, a corporation; Seattle Paint Company, a corporation, Hofius Steel & Equipment Company, a corporation; International Fence & Fireproofing Company, a corporation; Robinson Manufacturing Company, a corporation; August Weiffenback, doing business as the Seattle Cornice Works, F. T. Crowe and Company, Schwabacher Hardware Company and Western Hardware & Metal Company, intervenors in the above entitled cause, it is ordered that a writ of error be and hereby

is allowed to have reviewed in the Supreme Court of the United States, the judgment heretofore entered herein, bond herefor in the penalty of two hundred and fifty dollars (\$250.00) to be executed and filed by said above named intervenors and approved by this Court within twenty days from this date.

This writ of error is allowed solely upon the question of jurisdiction.

And on to-wit: the tenth day of May, 1909, being one of the days of the regular December term of said Court, 1908, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of May 10, 1909, as to Signing Bond on Writ of Error.

29114.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY et al.

Leave is hereby given sureties for Intervenor to sign bond on writ of error without signatures of the principals.

181 And afterwards to-wit: on the eighteenth day of May, 1909, being one of the days of the regular December term of said Court, 1908, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of May 18, 1909, Approving Bond on Writ of Error.

29114.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY et al.

Come again Pan-American Bridge Company, a corporation, Denny-Renton Clay & Coal Company, a corporation, Port Orchard Route, a corporation; Martin Gravel Company, a corporation, Seattle Paint Company, a corporation; Hofius Steel & Equipment Company, a corporation, International Fence & Fireproofing Company, a corporation, Robinson Manufacturing Company, a corporation; August Weiffenback, doing business as the Seattle Cornice Works, F. T. Crowe and Company, Schwabacher Hardware Company, Western Hardware & Metal Company, intervenors in the above entitled cause, by Castle, Williams, Long & Castle, Alden, Latham & Young, Ferguson & Goodnow and Stewart Reed Brown, their attorneys, and present their bond on writ of error to the Supreme Court in above entitled cause, which bond is approved by the Court and ordered to be filed.

182 And on the same day, to-wit: the eighteenth day of May 1909, there was filed in the clerk's office of said Court in said entitled cause a certain Bond on Writ of Error in words and figures following to-wit:

Bond on Writ of Error.

Know all Men by these Presents, That Fidelity & Deposit Company of Maryland, a corporation, as surety for Pan-American Bridge Company, a corporation, Denny-Renton Clay & Coal Company, a corporation, Port Orchard Route, a corporation, Martin Gravel Company, a corporation, Seattle Paint Company, a corporation, Hofius Steel & Equipment Company, a corporation, International Fence & Fireproofing Company, a corporation, Robinson Manufacturing Company, a corporation, August Weiffenback, doing business as the Seattle Cornice Works, F. T. Crowe and Company, Schwabacher Hardware Company and Western Hardware and Metal Company, Intervenor, is held and firmly bound unto Congress Construction Company, a corporation, S. N. Crowen and Peter F. Reynolds in the full and just sum of two hundred fifty (\$250.00) dollars to be paid to the said Congress Construction Company, a corporation, S. N.

Crowen and Peter F. Reynolds, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made it binds itself, its successors and assigns jointly and severally, by these presents.

Sealed with its seal and dated this — day of May, in the year of our Lord one thousand nine hundred and nine.

Whereas lately, at a term of the United States Circuit Court for the Northern District of Illinois, Eastern Division thereof in a suit depending in said Court, between United States of America, Plaintiff and Congress Construction Company, a corporation, S. N.

183 Crowen and Peter F. Reynolds, defendants a judgment was rendered against the said United States of America and said above named intervenors and the said United States of America and said above named Intervenor having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Congress Construction Company, a corporation, S. N. Crowen and Peter F. Reynolds citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said above named Intervenor shall prosecute their said writ of error to effect and answer all damages and costs of they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.]

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND,

By ARTHUR C. ARNOLD,

[SEAL.]

Agent and Attorney in Fact.

Sealed and delivered in presence of
— — —

Approved by

KENESAW M. LANDIS,
District Judge.

(Endorsed:) Filed May 18, 1909, H. S. Stoddard, Clerk.

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Præcipe for Transcript of Record.

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

29114.

UNITED STATES OF AMERICA

VS.

CONGRESS CONSTRUCTION COMPANY, S. N. CROWEN, and PETER F. REYNOLDS.

To the Clerk of the above entitled Court:

You will please prepare transcript of the record in this cause; to be filed in the office of the Clerk of the Supreme Court of the United States, under the Writ of Error allowed by said Court, and include in the said transcript the following pleadings, proceedings and papers on file, to-wit:

Præcipe for Summons, filed June 1, 1908.

Summons and Marshal's return thereon endorsed.

Declaration.

Affidavit of Jesse R. Long.

Order of June 18, 1908, as to mailing notice.

Affidavit of Mailing Notice.

Special Appearance of S. N. Crowen.

Plea of S. N. Crowen.

Plea of Peter F. Reynolds.

Special appearance of Peter F. Reynolds.

Special Appearance of S. N. Crowen.

Demurrer to Plea of Peter F. Reynolds.

Demurrer to Plea of S. N. Crowen.

Order of May 25, 1909, given leave to file affidavit of publication nunc pro tunc as of August 1, 1908.

Affidavit of Publication.

Order of July 8, 1908, leave given Western Hardware & Metal Co. to file intervening petition.

185 Intervening petition of Western Hardware & Metal Co.

Intervening petition of Pan-American Bridge Co.

Intervening petition of Denny-Renton Clay & Coal Company.

Intervening petition of Seattle Paint Company.

Intervening petition of Hofius Steel and Equipment Company.

Intervening petition of Robinson Mfg. Co.

Intervening petition of August Weiffenbach, etc.

Intervening petition of Martin Gravel Company.

Intervening petition of Port Orchard Route.

Appearance of Castle, Williams, Long & Castle for certain intervenors.

Intervening petition of International Fence & Fireproofing Co.

Intervening petition of Schwacher Hardware Company.

Intervening petition of F. T. Crowe and Company.

Judgment of February 13, 1909.

Certificate of Jurisdiction question.

Petition for writ of error.

Assignment of errors by United States.

Assignment of errors by Intervenor.

Order of May 11, 1909.

Order of May 10, 1909 as to signing of Bond on writ of error.

Order of May 18, 1909, approving Bond on writ of error.

Bond on writ of error.

CASTLE, WILLIAMS, LONG & CASTLE,
Attorneys for All Intervening Petitioners.

(Endorsed:) Filed May 11, 1909. H. S. Stoddard, Clerk.

186 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, H. S. Stoddard, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court made in accordance with *Præcipe* filed by Pan-American Bridge Company, a corporation; Denny-Renton Clay & Coal Company, a corporation; Port Orchard Route, a corporation; Martin Gravel Company, a corporation; Seattle Paint Company, a corporation; Hofius Steel & Equipment Company, a corporation; International Fence & Fireproofing Company, a corporation; Robinson Manufacturing Company, a corporation; August Weiffenback, doing business as the Seattle Cornice Works; F. T. Crowe and Company; Schwabacher Hardware Company and Western Hardware & Metal Company, Intervenor, in the cause entitled United States vs. Congress Construction Company, a corporation; S. N. Crowen and Peter F. Reynolds, as the same appear from the original records and files of said Court, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of Chicago, in said District, this first day of June, 1909.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

H. S. STODDARD, *Clerk.*

187 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Circuit Court of the United States for the Northern District of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, between United States of America, Plaintiff and Congress Construction Company, a corporation, S. N. Crowen, and Peter F. Reynolds, Defendants and Pan-American Bridge Company,

a corporation, Denny-Renton Clay & Coal Company, a corporation, Port Orchard Route, a corporation, Martin Gravel Company, a corporation, Seattle Paint Company, a corporation, Hofius Steel & Equipment Company, a corporation, International Fence & Fireproofing Company, a corporation, Robinson Manufacturing Company, a corporation, August Weiffenback, doing business as the Seattle Cornice Works, F. T. Crowe and Company, Schwabacher Hardware Company, Western Hardware & Metal Company, Interveners, a manifest error hath happened, to the great damage of the said United States of America, Plaintiff and Pan-American Bridge Company, a corporation, Denny-Renton Clay & Coal Company, a corporation, Port Orchard Route, a corporation, Martin Gravel Company, a corporation, Seattle Paint Company, a corporation, Hofius Steel & Equipment Company, a corporation, International Fence & Fireproofing Company, a corporation, Robinson Manufacturing Company, a corporation, August Weiffenback, doing business as the Seattle Cornice Works, F. T. Crowe and Company, Schwabacher Hardware Company and Western Hardware & Metal Company, Interveners as by their complaint appears. We being will that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if Judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid.

188 with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the Eleventh day of May, in the year of our Lord one thousand nine hundred and nine.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

H. S. STODDARD,

*Clerk of the Circuit Court of the United States
for the Northern Dist. of Illinois.*

Allowed by

KENESAW M. LANDIS, *Judge.*

189 [Endorsed:] 29114. Supreme Court of the United States. United States of America, vs. Congress Construction Company, a corporation, S. N. Crowen and Peter F. Reynolds. Filed May 11, 1909. H. S. Stoddard, Clerk. Writ of Error. Copy deposited for the defendant in error in the Clerk's Office U. S. Circuit Court, Northern District of Illinois.

190 UNITED STATES OF AMERICA, ss:

To Congress Construction Company, a corporation; S. N. Crowen and Peter F. Reynolds, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a Writ of Error, filed in the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, wherein United States of America, Pan-American Bridge Company, a corporation, Denny-Renton Clay & Coal Company, a corporation, Port Orchard Route, a corporation, Martin Gravel Company, a corporation, Seattle Paint Company, a corporation, Hofius Steel & Equipment Company, a corporation, International Fence & Fireproofing Company, a corporation, Robinson Manufacturing Company, a corporation, August Weiffenback, doing business as the Seattle Cornice Works, F. T. Crowe and Company, Schwabacher Hardware Company, Western Hardware & Metal Company, are Plaintiffs in Error, and you are defendants in error, to show cause, if any there be, why the Judgment rendered against the said Plaintiffs in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Kenesaw M. Landis, Judge of the District Court this Eleventh day of May, in the year of our Lord one thousand nine hundred — nine.

KENESAW M. LANDIS, *Judge*.

We hereby accept service of the above citation this 13th day of May A. D. 1909.

CONGRESS CONSTRUCTION COMPANY,
By WORTH E. CAYLOR, *Its Attorney*.
PETER F. REYNOLDS,
By WORTH E. CAYLOR, *His Attorney*.
S. N. CROWEN,
By ALLEN G. WILLS, *His Att'y*.

191 [Endorsed:] U. S. M. No. 8039. No. 29114. Supreme Court of the United States. United States of America vs. Congress Construction Company et al. Citation to the Supreme Court of the United States. Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed May 29, 1909. H. S. Stoddard, Clerk. Ent. E. C. C.

I have executed this writ within my district in the following manner, to-wit:

Upon the within named Congress Construction Company, a corporation, by delivering a true copy thereof to Fred A. Britten, Secretary of the said Company, on the 28th day of May, A. D. 1909. I was unable to find the President of the said Company.

By direction of attorneys for complainant I did not serve the within named S. N. Crowen and Peter F. Reynolds.

LUMAN T. HOY,
U. S. Marshal,
 By T. H. CURRIER, *Deputy.*

Marshal's Fees.

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Endorsed on cover: File No. 21,712. N. Illinois C. C. U. S. Term No. 837. The United States of America, Pan-American Bridge Company, Denny-Renton Clay & Coal Company, et al., plaintiffs in error, vs. Congress Construction Company, S. N. Crowen, and Peter F. Reynolds. Filed June 7th, 1909. File No. 21,712.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, PAN - AMERICAN
Bridge Company, Denny-Renton Clay
& Coal Company, et al., plaintiffs in
error,

v.

CONGRESS CONSTRUCTION COMPANY, S. N.
Crowen, and Peter F. Reynolds.

No. 63.

*IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.*

BRIEF FOR THE UNITED STATES.

STATEMENT.

This was an action in debt on bond in the Circuit Court for the Northern District of Illinois, against the Congress Construction Company, an Illinois corporation, and S. N. Crowen and Peter F. Reynolds, residents of the city of Chicago, in said district.

The declaration (R., 3-10) alleged, in substance, that the Congress Construction Company contracted with the United States for the construction of a boiler and blacksmith shop at the navy yard, Puget Sound, Washington; that it executed in that connection a bond in the penal sum of \$18,000, with Crowen and Reynolds as sureties, for the faithful performance of the contract, a copy of which was attached and made a part thereof (R., 10, 11); that this bond also contained an obligation that the contractor should make prompt payment to all persons supplying labor and materials in the prosecution of the work contracted for; that thereafter a large number of persons and firms furnished labor and materials in the construction of the building; that the building was completed in accordance with the terms of the contract; that the work was accepted by the United States and full payment made to the contractor of the amount specified in the contract, but that the contractor did not make payments to all persons supplying it with labor and materials, the names and residences of such unpaid labor and material men, and the amount due each of them, a total of \$25,405.97, being set out in full (R., 10); by means of which premises, it was alleged, an action had accrued to the United States against the defendants for the sum of \$18,000 debt and \$30,000 damages (R., 4, 5, 7, 10).

The suit was instituted by the United States under the authority of the act of February 24, 1905, hereafter set out, and, pursuant to the pro-

visions of that statute, the subcontractors who had furnished labor and material filed intervening petitions asserting their claims and praying that they be adjudicated in this action. (R., 28, 30, 37, 42, 53, 58, 63, 69, 74, 83, 86.)

No appearance in behalf of the Congress Construction Company was entered (R. 91). Special appearances were entered on behalf of the sureties for the purpose of contesting the jurisdiction (R., 18, 22), and pleas were filed by them, asserting that the Circuit Court for the Western District of Washington has exclusive jurisdiction of the action, and challenging upon that ground the jurisdiction of the Circuit Court in the Northern District of Illinois. (R., 19, 21.) The plaintiff demurred to the pleas upon the ground that they were not sufficient in law to quash the writ. (R., 24.) The Circuit Court overruled plaintiff's demurrers and entered judgment quashing the summons and dismissing the intervening petitions for want of jurisdiction. (R., 90, 91.)

This writ of error was thereupon sued out for the purpose of reviewing that judgment (R., 92, 97), the Circuit Court certifying that its decision is based solely on the ground that it is without jurisdiction to entertain and determine the cause. (R., 91.)

The assignments of error, by both the United States and the intervenors, challenge sufficiently the correctness of the action of the court in entering the judgment above mentioned. (R., 94, 95.)

STATUTE.

The act of February 24, 1905 (33 Stat., 811, 812), amends the act of August 13, 1894 (28 Stat., 278), "to read as follows" (the italicized words being added and those in parentheses omitted by this amendment):

That hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building or public work, shall be required, before commencing such work, to execute the usual penal bond, with good and sufficient sureties, with the additional obligations that such contractor or contractors shall promptly make payments to all persons supplying him or them *with labor and materials in the prosecution of the work provided for in such contract; and any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the United States on the bond of the contractor, and to have their rights and claims adjudicated in such*

action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the United States. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the United States, the remainder shall be distributed pro rata among said interveners. If no suit should be brought by the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon (and any person or persons making) application therefor, and furnishing affidavit to the Department under the direction of which said work (is being or) has been prosecuted that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, (shall) be furnished with a certified copy of said contract and bond, upon which he or they (said person or persons supplying such labor and materials) shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of the United States in the circuit court of the United States in the district in which said contract was to be performed and executed, irrespective of the amount in controversy in such suit, and not elsewhere, for his or their use and benefit, against said contractor and his sureties, and to prosecute the same to final judgment and execution: Provided,

That where suit is instituted by any of such creditors on the bond of the contractor it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later: And provided further, That where suit is so instituted by a creditor or by creditors, only one action shall be brought, and any creditor may file his claim in such action and be made party thereto within one year from the completion of the work under said contract, and not later. If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the sureties' liability, to wit, the penalty named in the bond, less any amount which said surety may have had to pay to the United States by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability: Provided further, That in all suits instituted under the provisions of this act such personal notice of the pendency of such suits, informing them of their right to intervene as the court may order, shall be given to all known creditors, and in addition thereto notice of publication in some newspaper of general circulation, published in the State or town where the contract is

being performed, for at least three successive weeks, the last publication to be at least three months before the time limited therefor. (Provided, That such action and its prosecutions shall involve the United States in no expense.)

(SEC. 2. Provided that in such case the court in which such action is brought is authorized to require proper security for costs in case judgment is for the defendant.)

ARGUMENT.

The determination of the jurisdictional question presented requires the consideration of but a single proposition, namely, whether—the work contracted for having been performed to the satisfaction of the Government and payment in full made to the contractor in accordance with the terms of the contract—the interest of the United States is such that a suit may be maintained by it, the labor and material men intervening to have their claims adjudicated.

The statute above quoted requires contractors with the United States “for the construction of any public building or the prosecution and completion of any public work”

* * * to execute the usual penal bond, with good and sufficient sureties, *with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract*; * * *

The obligation of the bond in this case is to the United States, and, in accordance with this statutory requirement, one of its conditions is that the Congress Construction Company “shall promptly make payments to all persons supplying him or

them labor and materials in the prosecution of the work provided for in the aforesaid contract." (R., 11.)

The amendment to the act of August 13, 1894, made by the act of February 24, 1905, recognizes the authority of the United States to institute suit on the bond of a contractor for the prosecution of any public building or public work.

The provision in question, incorporated into the statute by the amendment, is as follows:

* * * and any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the United States on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the United States.

The United States accordingly instituted this suit in the district in which the sureties reside, that being the only place where service of process upon them was possible, and, under authority of the above-quoted provision of the amended statute, the unpaid labor and material men intervened to have their rights and claims adjudicated.

It is true the statute as amended further provides that—

If no suit should be brought by the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials * * * shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of the United States in the Circuit Court of the United States in the district in which said contract was to be performed and executed, irrespective of the amount in controversy in such suit, and not elsewhere,
* * *

The contract in this case was to be performed in the Western District of Washington and the bondsmen resided in Chicago. The nonresidence of the sureties in the district in which the contract was to be performed and executed rendered suit by the labor and material men in that district impracticable, and under the act above quoted no suit could be brought by the labor and material men against the sureties elsewhere than in that district. Besides, suit having been instituted by the United States, in which the subcontractors were authorized to and did intervene, it did not become and is not necessary for them to proceed in accordance with that portion of the statute last above quoted.

The decision of this court in *United States Fidelity Co. v. Kenyon* (204 U. S., 349) determines the question here presented in favor of the jurisdiction

of the Circuit Court. That suit was brought on a bond given pursuant to the provisions of the above act of August 13, 1894, before it was amended, the United States "suing herein for the benefit and on behalf of James S. Kenyon," who had furnished a contractor, for use in the construction of a Government building, materials for which the latter had neglected and refused to pay. Damages to the amount of \$500 were claimed in the declaration. The value of the amount in dispute being less than \$2,000, the defendant moved that the action be dismissed for want of jurisdiction in the Circuit Court.

The contention there was that the United States was to be deemed a nominal party only, and that, therefore, the United States was not the plaintiff in the action in such a sense that the Circuit Court would have jurisdiction without regard to the amount in controversy.

In support of that contention, several cases were cited, holding that "for purposes of jurisdiction in the Federal courts regard is had to the real rather than the nominal party," and that "the real party in interest is not the nominal plaintiff, but the party for whose benefit the recovery is sought." But the court, in its opinion, holding that the Circuit Court had jurisdiction, said (pp. 356, 357):

This case differs from those just cited and stands, we think, on exceptional grounds. The United States is not here a merely nominal or formal party. It has the legal right,

was a principal party to the contract, and, in view of the words of the statute, may be said to have an interest in the performance of all its provisions. It may be that the interests of the Government, as involved in the construction of public works, will be subserved if contractors for such works are able to obtain materials and supplies promptly and with certainty. To that end Congress may have deemed it important to assure those who furnish such materials and supplies that the Government would exert its power directly for their protection. It may well have thought that the Government was under some obligation to guard the interests of those whose labor and materials would go into a public building. Hence, the statute required that, in addition to a penal bond in the usual form, one should be taken that would contain the specific, special obligation directly to the United States that the contractor or contractors "shall promptly make payments to all persons supplying him or them labor and materials in the prosecution of the work." * * * In a large sense the suit has for its main object to enforce that provision in the bond that requires prompt payments by the contractor to material men and laborers. The bond is not simply one to secure the faithful performance by the contractor of the duties he owes directly to the Government in relation to the specific work undertaken by him. It contains, as just stated, a special stipulation with the United States that the contractor

shall promptly make payments to all persons supplying labor and materials in the prosecution of the work specified in his contract. This part of the bond, as did its main provisions, ran to the United States, and was therefore enforceable by suit in its name. We repeat, *the present action may fairly be regarded as one by the United States itself to enforce the specific obligation of the contractor to make prompt payment for labor and materials furnished to him in his work.* There is therefore a controversy here between the United States and the contractor in respect of that matter.

In the *Kenyon* case the United States sued "for the benefit and on behalf of" a material man. The present suit differs only in the fact that it is brought in the name of the United States without such a declaration that it is instituted in behalf of anyone, but the failure to make payments to labor and material men is alleged in the declaration as a basis for the action, the amounts of their respective claims being set forth in the declaration, and such claims of the labor and material men are asserted by them in intervening petitions.

The original act of 1894, under which the *Kenyon* suit was instituted, provided only for proceedings on such bonds in the form of action there adopted, i. e., in the name of the United States for the benefit and on behalf of material men. By the amendment of 1905, however, the right of the United States to sue in its own name is recognized and in-

tervention in such an action by material men is specifically authorized. It was because of the amendment of 1905 that this change was made in the form of the action.

This difference in the form is not material. In principle the two cases are not different. The clear and forceful language used by the court in the *Kenyon* decision, above quoted, is equally applicable to the present suit. It shows sufficiently that the interest of the Government in such a suit is not merely nominal, but is real and substantial, and determines the question presented in favor of the right of the United States to maintain this action in its own name.

In that case, as shown by that portion of the opinion italicized above, the jurisdiction was sustained because that action could "fairly be regarded as one by the United States to enforce" the specific obligation to make payment for labor and materials furnished. Here the action is by the United States for that purpose.

After stating that the amendment of 1905 had no direct application to the *Kenyon case*, since that action was instituted prior to its passage and it was not made applicable to pending cases, the court in its opinion in that case, referring to the amendment, said (p. 359):

Nevertheless, that act throws some light on the meaning of the act of 1894, c. 280, for the protection of material men and laborers, and tends to sustain the view based on the

latter act, namely, that in suits brought in the name of the Government for their benefit the United States is a real litigant, not a mere nominal party, and that of such suits, the Government being plaintiff therein, and having the legal right, the Circuit Court may take original cognizance without regard to the value of the matter in dispute.

For the information of the court, the report of the Committee on the Judiciary of the House of Representatives, in favor of the passage of the amendment of 1905 (H. Rep. 2360, 58th Cong., 2d sess.), is attached as an appendix to this brief. The Senate Committee on Public Buildings and Grounds adopted as its report (S. Rep. 3918, 58th Cong., 3d sess.) a copy of the report above mentioned. It appears from this report that the main object of the amendment was to secure to the United States priority in the establishment of its claim against the contractor and to provide for the distribution of the remainder of the penalty of the contractor's bond among the labor and material men. "The right to subcontractors to intervene and set up their claim in any suit brought by the United States on the bond" is referred to as an incidental feature of the amendment. This report indicates that the general purpose of Congress was to enlarge rather than to restrict in any way the rights and remedies of both the Government and the labor and material men.

Jurisdiction in the *Kenyon case* being sustained upon the ground that the interest of the United

States in such a suit " for the benefit and on behalf of " a material man is substantial, and because such a case can " fairly be regarded as one by the United States itself " to enforce the specific obligation of the bond; it follows that the United States has in the present case at least a like substantial interest, and, this suit being by the United States itself to protect its interest, the Circuit Court has jurisdiction of this action.

That portion of the statute under consideration which recognizes the right of the United States to sue in its own name on such bonds, and authorizes labor and material men to intervene, does not attempt to limit the institution of such proceedings to any particular jurisdiction. In the absence of such a limitation, of course the district in which the defendants reside is the proper, and in this case it is the only practicable, place in which to institute such proceedings. (*Davidson Marble Co. v. Libon*, 213 U.S. 411)

That it was the intention of Congress not to limit a suit by the Government in its own name to any particular district is evidenced by the care it took in the act as amended to provide that suits which labor and material men institute in the name of the United States should be brought in the district where the contract was to be performed and executed, " and not elsewhere." Having authorized two forms of action and expressly limited one of them to a particular jurisdiction, it follows, applying a well-known rule of statutory construction,

that this limitation would be excluded from application to the form of action to which it was not expressly made applicable.

It seems sufficient for the purposes of the present case that the statute in question, at least impliedly, authorizes a suit by the United States in its own name and places upon such authorization no qualification as to the interest which may be asserted by the United States in such an action.

Authorities holding that the obligee of a bond may maintain an action on account of a breach thereof, and may recover nominal damages for such a breach, though another person as beneficiary sustains the substantial damage, are cited in the brief on behalf of the plaintiffs in error other than the United States (pp. 17, 18, 21-24).

This court has recognized the right of the Government, in the absence of express statutory authorization, to bring suit in its courts, not only when it has a pecuniary interest to assert, but when there is an obligation on its part "to the public or to any individual."

In *United States v. San Jacinto Tin Company* (125 U. S., 273), a suit to cancel a patent for land, it was said (p. 286):

* * * if there does not appear any obligation on the part of the United States to the public, or to any individual, or any interest of its own, it can no more sustain such an action than any private person could under similar circumstances.

In *United States v. Bell Telephone Company* (128 U. S., 315), commenting upon the above statement in the *San Jacinto Tin Company* opinion, the court said (p. 367):

This language is construed by counsel for the appellee in this case to limit the relief granted at the instance of the United States to cases in which it has a direct pecuniary interest. But it is not susceptible of such construction. It was evidently in the mind of the court that the case before it was one where the property right to the land in controversy was the matter of importance, but it was careful to say that the cases in which the instrumentality of the court can not thus be used are those where the United States has no pecuniary interest in the remedy sought, and is also under no obligation to the party who will be benefited to sustain an action for his use, and also where it does not appear that any obligation existed on the part of the United States to the public or to any individual. * * *

In the present case the United States, having accepted on this bond sureties who could not be served with process in the Western District of Washington—the right of the material men to sue being limited to that district by the statute—can not be said to be free from some obligation to those who have furnished labor and materials in the construction of the building and are otherwise without a remedy to recover the value thereof. But the in-

terest asserted in the present case by the Government is something more than merely an obligation to a particular subcontractor. As stated in the *Kenyon* opinion, "it may be that the interests of the Government, as involved in the construction of public works, will be subserved if contractors for such works are able to obtain materials and supplies promptly and with certainty. * * * It (Congress) may well have thought that the Government was under some obligation to guard the interests of those whose labor and materials would go into a public building."

Surely Congress could not have intended that, in case private individuals, residing outside the district where the work was to be performed, were accepted by the Government as sureties, or should leave that district after being accepted as sureties, the labor and material men should be without a remedy, or that the United States should not have a right to enforce the obligation of such a bond and a remedy in every case to enforce that right.

For these reasons it seems clear that the Circuit Court for the Northern District of Illinois has jurisdiction of this action. Therefore its judgment should be reversed.

Respectfully submitted.

WILLIAM R. HARR,
Assistant Attorney General.

NOVEMBER, 1911.

APPENDIX.

The report of Committee on Judiciary of the House of Representatives in favor of the passage of the amendment of 1905 (H. Rept. 2360, 58th Cong., 2d sess.) is as follows:

House Report No. 2360, Fifty-eighth Congress, second session.

PROTECTION OF PERSONS FURNISHING MATERIAL AND LABOR FOR PUBLIC WORKS.

APRIL 11, 1904.—Referred to the House Calendar and ordered to be printed.

Mr. ALEXANDER, from the Committee on the Judiciary, submitted the following report.

[To accompany H. R. 13626.]

The Committee on the Judiciary, to whom was referred House bill 13626, respectfully submit the following report:

The bill proposes to amend the act of August 13, 1894, for the protection of persons furnishing materials and labor for the construction of public works in such manner as to secure to the United States priority in the satisfaction of its claim against the contractor for such works out of the penalty of the bond given by him, in case he should fail in the performance of his contract, and to provide for a distribution of the remainder of such penalty among the persons furnishing labor and

materials to the contractor, ratably in proportion to the amount of their respective claims, in case such remainder be insufficient to satisfy the claims of all.

The necessity for this amendment has been brought about by the decisions of the Federal courts that the law which gives the United States priority in the satisfaction of its claim against an insolvent (Rev. Stat., sec. 3466) has no application to the case of an insufficiency of the penalty of the contractor's bond to satisfy both the claim of the United States and the claims of subcontractors in the event of a default by the contractors. (*United States v. Heaton*, 124 Rep., 700, since affirmed by Circuit Court of Appeals; *American Surety Co. v. Lawrenceville Cement Co. et al.*, 110 Fed. Rep., 25; 123 Fed. Rep., 288; 124 Fed. Rep., 699; 126 Fed. Rep., 811.)

The practical effect of these decisions will be to postpone the United States in every case till the claims of subcontractors are satisfied, or else to compel the United States to accept a ratable share in the distribution of the penalty of the bond when all the parties having claims upon the bond are convened in a court of equity at the suit of the surety. This results from the fact that the claims of subcontractors nearly always mature before that of the United States, who are not in a position to sue on the bond until the time limited for the performance of the contract has expired.

If it should be suggested that this difficulty can be obviated by taking a bond in a penalty large enough to secure all possible claims by the United States and of subcontractors also, the reply is that

this would be impracticable, as in that case in a work of any importance the amount of the bond would be so large as to be almost prohibitory when individual sureties are to be furnished, and exceedingly onerous where corporate surety is to be given and a premium paid the company. This premium is paid in the first instance by the contractor, but it is ultimately paid by the United States, as the contractor of course includes it in the estimate on which he makes his bid for the contract.

Incidental features of the amendment are those which—

1. Give the right to subcontractors to intervene and set up their claim in any suit brought by the United States on the bond.
2. Giving subcontractors the right to bring suit on the bond when no suit is brought by the United States.
3. Requiring all suits on such bond to be brought in the Federal courts.
4. Providing that suit on such bond by subcontractors must be commenced within one year after performance and final settlement of said contract.
5. Providing that only one action shall be brought on such bond on behalf of the subcontractors, to which action any subcontractor may become a party by filing his claim therein.
6. Giving the surety the right to pay into court the full amount of the penalty of the bond and to be discharged from further liability.

The committee recommends the passage of the bill with the following amendments:

After the words "United States," in line 16 of the bill, insert the words "within six months from

the completion and final settlement of said contract."

And at the end of line 25, page 3, after the word "liability," add the following:

Provided further, That in all suits instituted under the provisions of this act such personal notice of the pendency of such suits informing them of their right to intervene as the court may order shall be given to all known creditors, and in addition thereto notice of publication in some newspaper of general circulation published in the State or town where the contract is being performed for at least three successive weeks, the last publication to be at least three months before the time limited therefor.



IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1910.

THE UNITED STATES OF AMERICA,
Plaintiff in Error.

PAN-AMERICAN BRIDGE COMPANY, a Corporation, DENNY-RENTON CLAY and COAL COMPANY, a Corporation, PORT ORCHARD ROUTE, a Corporation, MARTIN GRAVEL COMPANY, a Corporation, SEATTLE PAINT COMPANY, a Corporation, HOFIUS STEEL and EQUIPMENT COMPANY, a Corporation, INTERNATIONAL FENCE and FIRE PROOFING COMPANY, a Corporation, ROBINSON MANUFACTURING COMPANY, a Corporation, AUGUST WEIFFENBACH, doing business as Seattle Cornice Works, F. T. CROWE & CO., SCHWABACKER HARDWARE COMPANY, WESTERN HARDWARE and METAL COMPANY,

Plaintiffs in Error,
vs.

CONGRESS CONSTRUCTION COMPANY,
S. N. CROWEN and PETER F. REYNOLDS,
Defendants in Error.

In Error to: the Circuit Court of the United States for the Northern District of Illinois.

Honorable
Keneaw M. Landis,
Judge Presiding.

Brief and Argument for Plaintiffs in Error Other than the
United States of America.

MAY IT PLEASE THE COURT:

The rights of the plaintiffs in error other than the United States in so far as the jurisdictional question is concerned are dependent largely, if not wholly, upon the right herein of the plaintiff in er-

ror United States, that is to say, if the Circuit Court had jurisdiction as it was originally invoked in this case, the plaintiffs in error other than the Government had a right in our opinion to intervene and have their claims adjudicated. This is our explanation for stating the facts and our views of the law briefly upon the issue raised both on the Government's pleadings and the decision of the Circuit Court as to the rights of our clients, the interveners below and plaintiffs in error here other than the United States.

STATEMENT OF THE CASE.

In the month of April, 1906, the United States by Mordecai T. Endicott, Chief of Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy, entered into a contract with the defendant in error, Congress Construction Company, an Illinois corporation, with its office in Chicago, in said state, for the construction of a building known as a boiler and blacksmith shop at the United States Navy Yard, Puget Sound, Bremerton, in the State of Washington, for the consideration of \$86,276, which contract was subsequently modified and the consideration reduced by \$4,674.29.

To secure the performance of this contract as it was originally made and as modified, and the prompt payment for all labor and material to the persons supplying said Congress Construction Company with the same in the prosecution of said work, the said company as principal and the other defendants in error, S. N. Crowen and Peter F. Reynolds, both also of Chicago, Illinois, as sureties, executed their bond to the United States of America in the sum of \$18,000.

The construction of the building was completed by the Congress Construction Company, and the building was accepted by the United States, and the contract price therefor was paid by the United States to the Congress Construction Company, but said company did not pay the persons furnishing it with

labor and material therein to the extent of more than \$25,000.

The United States of America thereupon began its suit in debt against the said principal and sureties on said bond in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, where all the defendants reside.

The praecipe for summons was filed June 1, 1908. (Transcript 1-2.)

The declaration was filed the same day. (Transcript 3.) It is in debt \$18,000, damages \$30,000. It is alleged therein that all the defendants are residents of Chicago, in the Northern District of Illinois. (Transcript 4.)

In each of the three counts in plaintiff's declaration the essential provisions of the bond are set up, including the condition that the bond is to be void if the said contractor, the Congress Construction Company, shall promptly make payments to all persons supplying said contractor with labor and materials in the prosecution of said work, otherwise to remain in full force and virtue, and a copy of said bond is made a part of each count, of the declaration. The breach of the bond alleged is that the contractor failed to promptly make payments to all persons supplying it with labor and material in the prosecution of said work to the extent of \$30,000, an itemized statement thereof being set out in the third count showing the actual unpaid debts on said work to be the principal sum of \$25,405.97. (First Count, Trans., 4, 5; Second Count Trans. 6, 7; Third Count, Trans., 7 to 10.)

The conditions of the bond are:

"The condition of the above bond is such, that if the said above bounden principal, Congress Construction Co., his or their heirs, successors, executors, or administrators shall well and truly, and in a satisfactory manner, fulfill and perform the stipulations of the contract hereto annexed, entered into with the Chief of the Bureau of Yards and Docks, acting under the direction of the Secretary of the Navy, for and in behalf of the United States, and shall conform in all respects to said contract, as it now exists or may be modified by the parties thereto, according to its terms, and to the plans and specifications attached thereto and forming a part thereof, and to the satisfaction of the said Chief of the Bureau of Yards and Docks, and *shall promptly make payments to all persons supplying him or them labor and materials in the prosecution of the work provided for in the aforesaid contract* then this obligation to be void and of no effect; otherwise to remain in full force and virtue." (Transcript 11.)

The sufficiency of the declaration as such is not challenged.

On June 18, 1908, an affidavit of a list of creditors of said company arising out of the construction of said Navy Yard building was filed. (Transcript 12 to 14.)

On same day an order was entered directing the mailing by the District Attorney of notice of said suit, and of the creditors' right to intervene, to each of such creditors. (Transcript 14, 15.)

On June 22, 1908, an affidavit of mailing such notices was filed. (Transcript 16, 17.)

Publication of notice of such suit and right to in-

tervene to the creditors of said company on account of said work was also had in the Bremerton News, for three successive weeks, commencing June 27, 1908, and ending July 11, 1908. (Transcript 26.)

The notices mailed by the said District Attorney and the publication thereof were an invitation to the sub-contractors holding unpaid bills for labor and material to appear in this suit, submit their claims and have them adjudicated. These invitations were accepted by plaintiffs in error other than the United States.

On July 8, 1908, defendant S. N. Crowen entered his special appearance for the purpose of contesting the jurisdiction of the court (Transcript 18) and filed his plea, not verified, in which he set out the statute of the United States of February 24, 1905, which we copy under Point III of our brief, and alleged that the Circuit Court of the United States for the Western District of Washington, and not the Circuit Court of the United States for the Northern District of Illinois had jurisdiction. (Transcript 19 to 21.)

On July 9, 1908, defendant Peter F. Reynolds filed his verified plea in which he set forth that plaintiff's cause of action accrued out of the jurisdiction of this court, that is to say at Bremerton, in the Western District of Washington, and not in Chicago, in the Northern District of Illinois. (Transcript 21.)

On July 18, 1908, the plaintiff, United States of America, filed its separate general demurrers to the pleas of said S. N. Crowen and Peter F. Reynolds, respectively. (Transcript 24.)

On July 8, 1908, the Western Hardware and Metal Company was given leave to intervene and set up its claim, (Transcript 27) which it did by petition. (Transcript 28.) Amount \$316.

On July 16, 1908, the following intervening petitions were filed:

Pan American Bridge Co.....	\$14,124.68
(Transcript 30 to 36.)	
Deny-Renton Clay & Coal Co.....	361.45
(Transcript 37 to 42.)	
Seattle Paint Co.....	430.38
(Transcript 42 to 52.)	
Hofius Steel & Equipment Co.....	910.28
(Transcript 53 to 58.)	
Robinson Manufacturing Co.....	2,109.00
(Transcript 58 to 63.)	
Aug. Weiffenbach, doing business as Seattle Cornice Works	3,857.24
(Transcript 63 to 69.)	
Martin Gravel Co.	253.00
(Transcript 69 to 73.)	
Port Orchard Route	193.55
(Transcript 74 to 77.)	
International Fence & Fireproofing Co...	743.45
(Transcript 78 to 82.)	
Schwabacker Hardware Co.....	1,128.01
(Transcript 83 to 86.)	
F. T. Crowe & Co.	599.28
(Transcript 86 to 89.)	

All of these intervening petitions show that labor and material were supplied by the claimants for use in the construction of the said boiler and blacksmith shop and were so used and were of the contract price and respective values aforesaid.

On February 13, 1909, the Circuit Court overruled

the demurrer of the United States to each of the pleas of defendants Crowen and Reynolds, and ordered the summons quashed for want of jurisdiction in this court to entertain, hear and determine the cause, to which the plaintiff and each intervener excepted. It was also ordered that said Congress Construction Company go hence for want of jurisdiction in the court, to which like exceptions were reserved. It was also ordered that the intervening petitions, and each of them, be and they were thereby dismissed for want of jurisdiction, to which each intervener objected and excepted. (Transcript 90, 91.)

On March 13, 1909, the Circuit Court for the Northern District of Illinois, certified to the Supreme Court under Section 5 of the Act of March 31, 1891, as follows:

“In the above entitled cause I hereby certify that the judgment of dismissal herein made is based on the ground that this Court is without jurisdiction to entertain and determine said cause, and that the declaration and intervening petitions herein, in my opinion disclose that the work performed and material furnished by said interveners, were performed and furnished in the State of Washington, and not in the Northern District of Illinois; and that treating the demurrers to the pleas in abatement as presenting the question of jurisdiction, and acting also independently of the demurrer, and on the Court's own motion, the suit is dismissed only for the reasons above stated,—that is, that said work not having been performed and said materials not having been furnished in the Northern District of Illinois, there is consequently no jurisdiction in this Court to hear and determine this cause.

This certificate is made conformably to Act of Congress of March 3, 1891, and the pleadings and orders and judgment in said cause will be sent up as part of the proceedings, together with this certificate.

KENESAW M. LANDIS,
*District Judge, holding the Circuit
Court of the United States for
the Northern District of Illinois,
Eastern Division.*" (Transcript
91 and 92.)

On May 11, 1909, the United States and the interveners petitioned for writ of error upon the question of jurisdiction (Transcript 92, 93), and at the same time the United States and the interveners filed their separate assignments of errors. (Transcript 94, 95, 96.)

On same day an order was entered allowing writ of error on giving bond in the sum of \$250.00 in twenty days. (Transcript 97.) Bond and order of approval of same, May 18, 1909. (Transcript 98, 99.)

The vital question in this case is whether the Circuit Court of the United States has jurisdiction as originally invoked to hear and determine the matters involved herein, and it is raised by the demurrers of the United States to the separate pleas of defendants Crowen and Reynolds to the declaration, and by the court on its own motion on examination of the declaration and intervening petitions herein.

ERRORS RELIED UPON.

We rely upon each error assigned as follows:

First. The Circuit Court erred in overruling plaintiff's demurrer to the plea in abatement of defendant S. N. Crowen.

Second. The Circuit Court erred in overruling plaintiff's demurrer to the plea in abatement of defendant, Peter F. Reynolds.

Third. The Circuit Court erred in quashing the summons and dismissing the suit as to said defendants, S. N. Crowen and Peter F. Reynolds, for want of jurisdiction.

Fourth. The Circuit Court erred in dismissing plaintiff's suit as to Congress Construction Company for want of jurisdiction.

Fifth. The Circuit Court erred in dismissing the intervening petitions of Pan-American Bridge Company, Denny-Renton Clay & Coal Company, Port-Orchard Route, Martin Gravel Company, Seattle Paint Company, Hofius Steel & Equipment Company, International Fence & Fireproofing Company, Robinson Manufacturing Company, August Weiffenbach, doing business as the Seattle Cornice Works, F. T. Crowe & Company, Schwabacher Hardware Company and Western Hardware & Metal Company, and each of them, for want of jurisdiction. (Transcript 94, 95, 96.)

BRIEF.

(Errors 1 to 5.)

I.

This is the ordinary common law action of debt. The United States is the plaintiff. Citizens and residents of Chicago, Illinois, are the defendants. In such a case the Circuit Court as such has jurisdiction to hear and determine the matter, and this jurisdiction was originally so invoked in this case.

The third subdivision of Section 629, under the Judiciary Act provides that the Circuit Courts shall have original jurisdiction

“of all suits at common law where the United States, or any officer thereof suing under the authority of any Act of Congress, are plaintiffs.”

Subdivision 3, Sec. 629, Vol. 4, Fed. Stat. An., p. 245.

Section 1 of the Judiciary Act of March 3, 1887-1888, is:

“That the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution or laws of the United States, or treaties

made, or which shall be made, under their authority, or in which controversy the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different States, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid, or a controversy between citizens of the same State claiming lands under grants of different States, or a controversy between citizens of a State and foreign states, citizens, or subjects, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid, and shall have exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except as otherwise provided by law, and concurrent jurisdiction with the district courts of the crimes and offenses cognizable by them. But no persons shall be arrested in one district for trial in another in any civil action before a circuit or district court; and no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant; nor shall any circuit or district court have cognizance of any suit, except upon foreign bills of exchange, to recover the contents of any promissory note or other chose in action in favor of an assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made; and the circuit courts shall also have appellate jurisdiction from the district courts

under the regulations and restrictions prescribed by law."

25 Stat. 434.

U. S. Fidelity Co. v. U. S. for benefit of Kenyon, 204 U. S. 354.

II.

This action is for damages sustained by the United States on breach of the condition of the bond given to it requiring the contractor to pay its sub-contractors. The action is not brought by the United States in a trust capacity for the use and benefit of the sub-contractors, but in its own right, through its own law officer.

III.

The statute of February 24, 1905 (33 Stat. 811), relating to bonds for public work and certain actions thereon, is in this language:

"That hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building, or public work, shall be required, before commencing such work, to execute the usual penal bond, with good and sufficient sureties, with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract; and any person, company, or corporation who has furnished labor or materials used in the construction or

repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the United States on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the United States. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the United States, the remainder shall be distributed *pro rata* among said interveners. If no suit should be brought by the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the Department under the direction of which said work has been prosecuted that labor or materials for the prosecution of such work has been supplied by him, or them, and payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action, and shall be and are hereby, authorized to bring suit in the name of the United States in the circuit court of the United States in the district in which said contract was to be performed and executed, irrespective of the amount in controversy in such suit, and not elsewhere, for his or their use and benefit against said contractor and his sureties, and to prosecute the same to final judgment and execution; provided, that where suit is instituted by any of such creditors on the bond of the contractor it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the

performance and final settlement of said contract and not later; and provided further, that where suit is so instituted by a creditor or by creditors, only one action shall be brought and any creditor may file his claim in such action and be made a party thereto within one year from the completion of the work under said contract, and not later. If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor *pro rata* of the amount of the recovery. The surety on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the sureties' liability, to wit, the penalty named in the bond, less any amount which said surety may have had to pay to the United States by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability: Provided further, that in all suits instituted under the provisions of this Act such personal notice of the pendency of such suits, informing them of their right to intervene as the court may order, shall be given to all known creditors, and in addition thereto notice of publication in some newspaper of general circulation, published in the State or town where the contract is being performed, for at least three successive weeks, the last publication to be at least three months before the time limited therefor."

This statute does not effect the jurisdiction of the Circuit Court for the Northern District of Illinois, as originally invoked, under the pleadings in this case, because

(a) The action is not brought by the United States by virtue of said statute alone, though that act recognizes the right of the government to sue on such bond, nor is it brought by the sub-contract-

ors in the name of the United States for their use and benefit under said act.

(b) The limitation in the said statute as to the place the suit shall be brought—that is, where the work was done—does not apply to actions brought by the United States for damages sustained by it. In other words, this statute does not change the rule as to the court where the United States shall sue where it sues for its own damages.

(c) The statute only applies where the suit is in the name of the United States for the use of the furnishers of labor and material to the contractors for government work. The language of the statute is: "If no suit should be brought by the United States in the Circuit Court of the United States" * * * then the sub-contractor may sue "in the name of the United States in the Circuit Court of the United States in the district in which said contract was to be performed * * * and not elsewhere, for his or their use and benefit, against said contractor and his sureties."

(d) The only effect of the statute under the pleadings in this case is to allow sub-contractors to intervene and assert their claims, and to deprive the United States from recovering as its own damages the amounts of sub-contractors' claims.

IV.

The conditions of the bond are not satisfied by the construction and completion of the building by the contractor. The bond provides among other things in substantially the language of the statute that the

contractor "shall promptly make payments to all persons supplying him or them labor and materials in the prosecution of the work provided for in the aforesaid contract." In this provision the government has an actual, beneficial interest.

V.

Whether the United States is entitled to recover the amounts of the claims of sub-contractors as its damages on the theory that the legal title to all damages for breach of the bonds is in the United States as the sole obligee therein, regardless of the conditions of defeasance, or whether the United States can recover only nominal damage for the breach of the bond, the substantial damages being sustained by sub-contractors, is not important for consideration here. A breach of one condition of the bond is alleged. From that *some* damage flows, and the government can recover something. The sufficiency of the declaration as stating a cause of action is not challenged. The only question is, does the Circuit Court have jurisdiction, as originally invoked, to hear and determine such a suit by the government?

(a) It has been held that the obligee of a bond may maintain an action thereon and recover the full amount of damages by reason of a breach of a condition thereof, regardless of who the beneficiaries may be. The legal title to all damages accruing from a breach is in the obligee of the bond.

Silver v. Smith, 106 Ill. App. 411, 415.

International Hotel Co. v. Flynn, 238 Ill. 636.

Pittsburg, Fort Wayne & Chicago R. R. Co. v. Reno et al., 22 Ill. App. 470.

Sandusky et al. v. Neal, 2 Ill. App. 624.

Phillips et al. v. Singer Mfg. Co., 88 Ill. 305, 307.

3 Enc. of Pldg. & Prac. 639.

Dicey on Parties, 101.

1 Chitty on Pldg. 3-9; 54 U. S. App. 499.

Gautzert v. Hoge, 73 Ill. 30.

Scott v. The People, etc., 2 Ill. App. 646.

Stevens v. Partridge, 88 Ill. App. 665, 673.

(b) It is also the law that the obligee of a bond, the United States in this case, is entitled to recover a nominal damage for breach of a condition of the bond, even though the sub-contractors sustain the substantial damage.

Karr v. Peter, 60 Ill. App. 209, 211.

The People for Use, etc., v. Yeazel, 84 Ill. 539, 542.

Dady v. Condit, 188 Ill. 234, 237.

The People for Use, etc., v. Hunter et al., 89 Ill. 392, 394.

Coppinger v. Armstrong, 8 Ill. App. 210, 215.

Doyle v. School Directors, 36 Ill. App. 653, 656.

Church v. Vedder, 14 Wend. 165.

VI.

The statute of February 24, 1905 (33 Stat. 811) does not deprive the United States of its right to nominal damages, but merely gives the sub-contractor a right to assert his own claim where the United

States has taken steps to collect its own damages, whether nominal or substantial.

33 Stat. 811.

Compiled Stat. 1907, p. 709.

VII.

This view is sustained by the construction placed upon the statute by the courts that the bond performs a double function.

(a) It secures to the government the performance of the contractor's obligations to it.

(b) It protects third persons from whom the contractor obtained materials or labor.

U. S. v. National Surety Co., 92 Fed. 549.

U. S. v. Rundle, 100 Fed. 400.

VIII.

Our view of the statute is that it affirms the common law right of the government to take such a bond as was taken in this case, and makes it obligatory upon the government to take the same where it is contracting for public work, without destroying the government's right to sue on the bond in any court at any time under existing laws, and it further gives the sub-contractors the right to maintain suit in the name of the government for their use under the conditions therein prescribed, and that to the extent that sub-contractors can assert their own claims the government cannot recover for them. The government, therefore, in this case can recover nominal damages, and being entitled to recover nominal damages the sub-contractors may intervene under

the statute. Such suit by the government must be in a court having jurisdiction of the subject matter, and where service can be had on the defendants. Such court is the Circuit Court of the United States, located in the Northern District of Illinois.

IX.

The statute provides that the sub-contractor who has furnished labor and material, and payment for which has not been made,

“shall have the right to intervene and be made a party to any action instituted by the United States on the bond of the contractor,”

and such sub-contractors

“shall have their rights and claims adjudicated in such action and have judgment rendered thereon.”

The statute also provides for personal notice and notice by publication to the sub-contractors

“informing them of their right to intervene as the court may order.”

Statute of February 24, 1905, 33 Stat. 811.

X.

The plaintiffs in error, other than the United States, having received notice of this suit by the United States, and being given the right by such statute to intervene, did so, and submitted their rights and claims to the court for adjudication and judgment. They are within their rights under the statute and should have been given the opportunity to have their claims adjudicated, instead of having them dismissed for want of jurisdiction in the court.

Statute of February 24, 1905, 33 Stat. 811.

ARGUMENT.

NATURE AND RIGHT OF ACTION.

The government in this case sued for damages for breach of a condition of the contractor's bond for public work in the Puget Sound Navy Yard.

The government had the right to take a bond securing the payment for materials and labor supplied by third parties independent of the statute of February 24, 1905, in our opinion, but whether it had or not this statute specifically authorized it. We take it also the government had the right to sue for its own damages on breach of any bond so taken by it, whether it be independent of this statute or under the same.

It has long been the law that the obligee of a bond can sue for a breach thereof, and if the obligee has suffered no substantial damage still by the breach nominal damage can be recovered.

In the case of *Karr v. Peter*, 60 Ill. App. 209, on page 211, the Appellate Court of Illinois, in a suit on a contractor's bond providing that the contractor should pay sub-contractors, the owner not being liable on sub-contracts, said:

"The contract for the erection of the building stipulated that McElyea (the contractor) should pay all bills for material and labor; and under that clause of the condition of the bond which provided that McElyea should well, truly and promptly comply with all the provisions of

the contract, a failure on his part to pay any bill for material used or labor performed in the erection of the house, according to the terms of the contract, would constitute a breach of the bond.

While this is true, it is also true that only nominal damages would be recoverable for such a breach of the bond, unless it be shown that appellees are liable for the payment of the bills, or some of them, which McEylea has failed to pay."

In the *People for Use, etc., v. Yeazel*, 84 Ill. 539, 542, the Supreme Court of Illinois said:

"In this case it appears that the collector, Lewis, paid to one Swearingen, township treasurer of township 19, range 11, when he should have paid it to Freeman, township treasurer of town 19, range 14 west, and Swearingen, on discovering the mistake, paid the amount to the school directors of town 19, range 14, so that the district lost nothing. The proper district received, in this indirect way, all the money to which it was entitled. Still, there was a breach of the condition of the bond, and judgment should have gone against the surety for nominal damages at least. Though the district, in a pecuniary view, lost nothing, a violation of a plain law is established against the collector, and it will not do to disregard it. Such a mistake as is here shown can not be permitted to pass uncorrected by the court. A strict compliance with the law must be required of all officials. Sureties must understand this, and they must know, if their principals are derelict they must be made to suffer."

In *Dady v. Condit*, 188 Ill. 234, 237, which was an action for breach of an agreement to convey real estate, the Supreme Court of Illinois used this language:

"The only contested question before the last jury was as to the damages. It is asserted in the argument of counsel for appellant that upon the declaration and plea he was not liable even for nominal damages; but the claim is not seriously insisted upon, as it could not be under the proofs. The validity of the agreement had already been determined by this court, and the defendant's failure and refusal to perform it was clearly established by the evidence and not denied by him. These facts were sufficient to establish the plaintiff's right to mere nominal damages."

In *The People, Use, etc., v. Hunter et al.*, 89 Ill. 392, 394, which was an action on administrator's bond, it was held that where a breach of a condition of the bond was established the plaintiff was entitled to recover nominal damage, though no real and substantial injury was shown.

In *Coppinger v. Armstrong*, 8 Ill. App. 210, 215, the court said:

"If the plaintiff proved a breach of the covenant, the law would imply at least nominal damages, though unless there was proof of actual substantial injury no more could have been allowed."

This action was for breach of a covenant of a lease.

In *Doyle v. School Directors*, 36 Ill. App. 653, 656, the same rule of law is declared.

In *Church v. Vedder*, 14 Wendell 165, the Supreme Court of New York in an action on the bond of a church treasurer, which provided such treasurer should deposit all church funds in a certain designated bank, and the breach alleged was that he had not made such deposit in the designated bank, and

counsel argued that a deposit in another bank whose solvency was unquestioned, no damages could be recovered, on page 170 said:

“Upon the assessment it may appear that although Gerrit Gates did not keep a separate account in the bank of Albany (the designated bank), that he made his deposits in some other equally safe bank, in such case only nominal damages could be assessed upon the assignment. I am inclined, however, to think upon authority that the assignment is sufficient, although the plaintiffs would be entitled to recover only nominal damages.”

In re U. S. Fidelity Co. v. United States for Benefit of Kenyon, 204 U. S. 349, which, unlike the case at bar, was by the government for the use of a subcontractor on a bond for government work, the Supreme Court said (page 354):

“A Circuit Court of the United States, as provided in the Judiciary Act of 1887-88, may take original cognizance of any suit, at common law or in equity, arising under the laws of the United States, if the value of the matter in dispute exceeds \$2,000, exclusive of interest and costs. 25 Stat. 433, c. 866. But if, within the meaning of that act, the United States is the plaintiff in the action, then jurisdiction exists in a Circuit Court without regard to such value.” *United States v. Sayward*, 160 U. S. 493; *United States v. Shaw*, 39 Fed. Rep. 433; *United States v. Kentucky River Mills*, 45 Fed. Rep. 273; *United States v. Reid*, 90 Fed. Rep. 522.”

(Page 356):

“The United States is not here a merely nominal or formal party. It has the legal right, was a principal party to the contract, and, in view of the words of the statute, may be said to

have an interest in the performance of all its provisions. It may be that the interests of the government, as involved in the construction of public works, will be subserved if contractors for such works are able to obtain materials and supplies promptly and with certainty. To that end Congress may have deemed it important to assure those who furnish such materials and supplies that the government would exert its power directly for their protection. It may well have thought that the government was under some obligation to guard the interests of those whose labor and materials would go into a public building. Hence, the statute required that, in addition to a penal bond in the usual form, one should be taken that would contain the specific, special obligation directly to the United States that the contractor or contractors 'shall promptly make payments to all persons supplying him or them labor and materials in the prosecution of the work.' " * * *

(Page 357):

"The bond is not simply one to secure the faithful performance by the contractor of the duties he owes directly to the government in relation to the specific work undertaken by him. It contains, as just stated, a special stipulation with the United States that the contractor shall promptly make payments to all persons supplying labor and materials in the prosecution of the work specified in his contract. *This part of the bond, as did its main provisions, ran to the United States, and was therefore enforceable by suit in its name.* We repeat, the present action may fairly be regarded as one by the United States itself to enforce the specific obligation of the contractor to make prompt payment for labor and materials furnished to him in his work."

It may be well said that the government had an interest other than a mere financial interest in

having the conditions of the bond performed. The bond had the effect of enabling the contractor to get credit, to have the material delivered promptly and the labor performed without delay, so that the government's work was not delayed, and in this way the government had a very substantial and beneficial interest in the bond, with a corresponding right to have its terms complied with, or if not complied with, to recover for a breach. The bond took the place of a mechanics' lien applicable to private work.

A right of action for debt for breach of the bond is thus shown. This right existing in the government (and it is not questioned by any pleading of defendants in error), the government began its suit in the Circuit Court of the United States for the Northern District of Illinois, which was the district in which the defendants resided and of which they were inhabitants.

THE CIRCUIT COURT HAS JURISDICTION.

The pleadings show this action was begun in the district where the defendants could be served with process and the record shows they were all served with process. (Transcript, 3.)

Under the sections of the Judiciary Act quoted under Point I of this brief, the action was brought in the proper court. The jurisdiction of the Circuit Court as originally invoked in this action of debt under the Judiciary Act is clear. Its jurisdiction is certainly beyond question, unless the act of February 24, 1905, has changed the rule.

ACT OF FEBRUARY 24, 1905, DOES NOT CHANGE THE
RULE.

This statute does not change the rule in our opinion. The act itself, we think, settles the question. There is not a word or phrase therein that limits the place where suit shall be brought by the government for its own benefit. The only limitation as to time or place of suit is where the action is by the sub-contractors in the name of the government for their use. The language of the act, after providing that a bond shall be given, is:

"Any person, company or corporation who has furnished labor or materials used in the construction or repair of any public building or any public work, and the payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the United States on the bond of the contractor, and to have their rights and claims adjudicated in such action, and judgment rendered thereon. * * * *If no suit should be brought by the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials* * * * shall be and are hereby authorized to bring suit in the name of the United States in the Circuit Court of the United States in the district in which said contract was to be performed and executed * * * and not elsewhere, for his or their use and benefit, against said contractor and his sureties and to prosecute the same to final judgment and execution, * * * provided further, that in all suits instituted under the provisions of this act such personal notice of the pendency of such suits, informing them of their right to intervene as the court may order, shall be given to all known

creditors, and in addition thereto notice of publication in some newspaper of general circulation'' * * * shall be given.

This act gave the sub-contractors a right to intervene in a suit by the government, and it gave them a right to sue in the name of the government for their use if the government did not sue within six months from the completion of the contract. As to the suit by sub-contractors in the name of the government, there is a limitation both as to time and place of such suit, but there is no such limitation as to either time or place where the government sues on its own behalf for its own damage. The right of the government to maintain its suit is not derived from that statute, and the place it shall sue is not fixed thereby. This being true, the government properly brought its suit in the Circuit Court of the United States where the defendants resided and where it could serve process upon them, and it is of no importance whether the bond and action be deemed statutory or not. *It must constantly be borne in mind that this action is not a suit brought by the sub-contractors in the name of the government for their use.* Such an action is statutory and can only be brought where and when the statute provides, but this is not the case at bar. Here the government sues for its own damage.

We do not believe the law makers intended, or that the courts will construe, the act of February 24, 1905, to mean that the government, after having taken a bond for the protection of sub-contractors, can have no practical or adequate remedy. If the proper construction of the act is that the govern-

ment can sue only where the work was done, then under the facts pleaded in this case the government has no actual remedy. Under these facts the government can sue only in a place where it can not have its process served and can get no judgment. On our theory of the proper construction of the act the remedy is efficient and adequate. The Circuit Court has jurisdiction of the subject matter. The parties defendant can be brought into that court in the district where they reside, regardless of where the work was done. The rights of all can be adjudicated. This is fair. Any other construction is unreasonable and does violence to both the letter and spirit of the law. Suppose the government took a bond from a contractor resident of the district where the work was to be done, with sureties resident of the same district, and suppose there was a breach of a condition of the bond whereby the government sustained a substantial damage, and the principal and sureties moved their residence to and became inhabitants of some other district or state before suit was brought by the government, would the government be denied the right of action in the Circuit Court where it could get service? Certainly not. Yet if the theory of defendants in error is right, such result would follow.

A careful reading of the act will, we think, convince the court that it places no limitation upon the place where the government may sue in its own behalf, and as the jurisdiction of the Circuit Court in an action in debt by the government is ample, the court below erred in overruling plaintiff's demurrers to the pleas of defendants in error and in sus-

taining their pleas and in dismissing plaintiff's case on its own motion for want of jurisdiction in the court.

We take it the rights of the plaintiffs in error, other than the United States, in so far as the jurisdictional question is concerned, depends upon the right of the United States to maintain this action, and if the United States can maintain it then these plaintiffs in error can have their rights determined in this case. The statute gives this right in clear and unequivocal terms as we read it, the plaintiffs in error other than the United States acted under it in intervening, and we submit the court erred in dismissing their intervening petitions for want of jurisdiction in the court, and that the cause should be reversed and remanded.

JESSE R. LONG,

*Attorney for Plaintiffs in Error Other Than the
United States.*

Office Supreme Court, U. S.
FILED.

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CLERK.

No. 63.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1911.

THE UNITED STATES, PAN-AMERICAN BRIDGE COMPANY,
DENNY-RENTON CLAY & COAL COMPANY et al.,

Plaintiffs in Error,

vs.

CONGRESS CONSTRUCTION COMPANY, S. N. CROWEN
and PETER F. REYNOLDS,

Defendants in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

Reply Brief on Jurisdictional Question.

JESSE R. LONG,
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*Attorneys for Plaintiffs in Error, other
than the United States of America.*



IN THE
Supreme Court of the United States,

OCTOBER TERM, A. D. 1911.

No. 63.

UNITED STATES OF AMERICA, PAN-AMERICAN
BRIDGE COMPANY, DENNY-RENTON CLAY
& COAL COMPANY et al.,

Plaintiffs in Error,

vs.

CONGRESS CONSTRUCTION COMPANY, S. N.
CROWEN and PETER F. REYNOLDS,

Defendants in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

REPLY BRIEF ON JURISDICTIONAL QUESTION.

Counsel for defendant in error, Crowen, has filed a brief on "Jurisdictional Question," and has cited two cases. They are *Louisville Trust Co. v. Knott*, 191 U. S. 225, and *Fore River Shipbuilding Co. v. Hagg*, 219 U. S. 175.

Neither of those cases is like the case at bar. In the latter one the question presented was, whether a federal court would enforce a penal statute of Mas-

sachusetts. The suit was begun in the Circuit Court of the United States for the District of Massachusetts, by Selma T. Hagg, a citizen of Sweden, against the Fore River Shipbuilding Company, a corporation of Massachusetts. The object of the suit was to recover damages under the Employers' Liability Act of Massachusetts, and was for the death of plaintiff's husband, an employe of the defendant company, resulting from injuries received at the defendant's forge shop in Quincy, Massachusetts. The action resulted in a verdict and judgment for the plaintiff.

The defendant moved the court to dismiss the action on the ground that it was without jurisdiction, for the reason that the Massachusetts statute was of a penal character and, therefore, an action upon it could be maintained only in the courts of Massachusetts. The question presented was, whether, owing to the character of the Massachusetts act, the courts of another sovereignty would enforce its provisions, or whether the sole remedy was under the laws of the commonwealth enacting the statute.

The Supreme Court, in its opinion, said (page 186):

* * * "There was jurisdiction in the Circuit Court of the United States for the District of Massachusetts, under the Judiciary Act, as the plaintiff was a citizen of Sweden and the defendant, Shipbuilding Company, a corporation of Massachusetts. Thus having jurisdiction, it was at liberty to decide all questions properly before it, including the one whether under the applicable principles of law, a court of another sovereignty would enforce a cause of action based upon the Massachusetts statute. But the determination of that question did not involve

the jurisdiction of the Circuit Court as a federal court. It was a question to be decided upon the application of the same principles as would apply had the action been brought in a court of another state or nation. Whether other sovereignties would enforce penal actions of the character alleged to arise under the Massachusetts statute was not a question peculiar to the federal jurisdiction of the court. It was general in its nature and to be determined upon principles controlling in other courts, as well as those of federal creation."

The other case cited by counsel for defendant in error, Crowen, in his brief (*Louisville Trust Co. v. Knott*, 191 U. S. 225) is referred to by the Supreme Court in its opinion in the *Hagg* case, *supra*, and the court clearly distinguishes that case from the case at bar. The Supreme Court, in its opinion in the *Hagg* case, referring to the *Knott* case, said (page 186):

"In that case a state court had taken jurisdiction of an action in equity, in which a receiver was asked for, and none had been appointed at the time when another suit was begun in the Circuit Court of the United States, and a receiver appointed therein. Thereafter, the state court, which had first taken jurisdiction, appointed a receiver, and upon its direction that receiver intervened in the federal court and asked to have the property turned over to him. The Circuit Court of the United States maintained its own jurisdiction and refused to give the property to the state receiver. The case came to this court upon a certificate of the question involving the jurisdiction of the Circuit Court of the United States. This court dismissed the writ of error for want of jurisdiction, holding that the question presented was one of the equity jurisdiction of one court as

against the like jurisdiction in another court and did not present a distinctive question as to the jurisdiction of the federal court as such."

These two cases are clearly distinguishable from the case at bar. In both of them the question presented was the general authority of the federal court as a judicial tribunal, to proceed in harmony with the established rules of practice governing courts of concurrent jurisdiction, as between each other. It did not involve the power of the federal court, as such, to hear and determine the matter in controversy.

In the *Knott* case, the question was not, whether the federal court had power to appoint a receiver, but whether, in the exercise of that power as against the state court, likewise having jurisdiction over the general subject-matter, it should exercise its power.

In the *Hagg* case, the question was not, whether the federal court had power to enforce the Massachusetts statute, but whether it, in the exercise of that power, should enforce such statute.

In the cases referred to in the two cases cited by defendant in error, Crowen, a like distinction in principle from the case at bar can be made. For example, in the *World's Columbian Exposition* case (6 C. C. A. 58), reviewed in the *Knott* case, it was said:

"The objection was the want of equity and not the want of power."

In all such cases the question was not one of power in the federal court to hear and determine the matters involved, but whether, in the exercise of that power, it should hear and determine them.

In the case at bar the question was, whether the Circuit Court of the United States for the Northern District of Illinois, as a court, under the jurisdiction originally invoked, had power or jurisdiction to hear and determine the matters involved, not how they should be determined, or in whose favor they should be determined.

The court held that it had no such power. It treated the pleas in abatement by defendants in error, Crowen and Reynolds, and the demurrers by the United States thereto, as raising this question, and also took cognizance of its supposed lack of jurisdiction on its own motion, and solely on its own motion dismissed the intervening petitions of creditors and subcontractors filed therein. The question then certified to this court was, "The judgment of dismissal herein made is based on the ground that this court is without jurisdiction to entertain and determine said cause," and after setting up the pleadings and reciting that the action of dismissal taken by the court was "also independently of the demurrer and on the court's own motion," concludes "There is consequently no jurisdiction in this court to hear and determine this cause." (Rec., 91-92.)

This court has entertained jurisdiction, and has passed upon jurisdictional questions certified by Circuit Courts under the same state of facts, in principle, as those involved in the case at bar.

Davidson Brothers Marble Co. v. United States ex rel. Gibson, 213 U. S. 10.

United States Fidelity Co. v. United States for benefit of Kenyon, 204 U. S. 349.

In the Davidson Company case, *supra* (213 U. S. 10), the facts were that Davidson Brothers Marble Company, an Illinois corporation, entered into a contract with the United States for the construction of a public building in San Francisco, California, and that company, as principal, with Samuel A. and John A. Tolman, citizens and residents of Illinois, as sureties, executed and delivered to the Government its bond for the faithful performance of said contract and the payment to all persons supplying it with labor or materials, in the prosecution of the work. Gibson furnished certain labor and materials used in the prosecution of the work to the Davidson Company, for which a large sum was due and unpaid. Suit was brought by the United States for the use of Gibson, against the Davidson Company, as principal, and Samuel A. and John A. Tolman, as sureties on the bond, aforesaid, in the Circuit Court of the United States for the Northern District of California, where the work was performed. The three defendants were all citizens and residents of Illinois. The jurisdictional question was, whether the Circuit Court of the United States for the Northern District of California, within which district the work was performed, or the Circuit Court of the United States for the Northern District of Illinois, of which district all the defendants were inhabitants, had jurisdiction. In that case a writ of summons was issued to the defendants from the court in California and served upon them personally in Illinois. Notice of the pendency of the suit was also given by publication. The defendants appeared specially and demurred to the complaint and moved to quash the

service of the summons and dismiss the action upon the ground that the said Circuit Court for the Northern District of California was without jurisdiction. The motion to quash was denied, the demurrer was overruled, the defendants declined to plead further, judgment was entered against them, and the defendants, by writ of error, brought the question of jurisdiction directly to the Supreme Court.

This court entertained jurisdiction in that case and said, among other things:

"We have here, then, a suit in which the United States is plaintiff and three citizens and residents of the State of Illinois are defendants. * * * The case is governed by that part of the Act of March 3, 1887, as corrected by the Act of August 13, 1888, which provides that no civil suit shall be brought before any of the Circuit Courts of the United States 'against any person, by any original process or proceeding, in any other district than that whereof he is an inhabitant.' (Citing authorities.) It follows, therefore, that the court below was without jurisdiction in this cause."

In the case from which we have quoted there was as much of a question as to which of two Circuit Courts had jurisdiction as there is in the case at bar, but the real question in both cases was not, which of the two Circuit Courts has jurisdiction, but did the Circuit Court in which the action was instituted have power as a federal court to hear and determine the matters in controversy. That question was determined under the Judiciary Act, and in the California case was against the jurisdiction of the Circuit Court in the Northern District of California.

From this case two conclusions are deducible: *First*, the question was properly certified to the Supreme Court and the writ of error properly sued out from this court in the case at bar; *secondly*, the jurisdiction is in the district of which the defendants are inhabitants, which, in both cases, was the Northern District of Illinois under the Judiciary Act, and not the district in which the work was performed, under the Act of February 24, 1905.

The situation of the parties in interest in the Davidson Company case, *supra*, and in the suit at bar, was identical. Both cases arose out of contracts for public work and failure of the contractor to pay furnishers of material and labor. In both cases the principal and sureties on the bond were citizens and residents of the State of Illinois. In both cases, some, at least, of the creditors were citizens and residents of other states than the state in which the work was done and the state in which the defendants resided. In the *Davidson Company* case, counsel brought their suit in the district in which the work was done, to wit: in the Northern District of California, and got service on defendants in Illinois. In the case at bar, counsel saw fit to institute the suit in the district of which the defendants were inhabitants. The case at bar was begun on June 1, 1908. The Davidson Company case was decided in the Supreme Court on February 23, 1909. Counsel acted, in the institution of this suit, upon their best judgment as to the proper construction of the two acts of Congress in question, both as to the jurisdiction of the courts and proper interpretation of the acts, and the principle on which

they acted was declared to be the law by this court in the *Davidson Company* case.

Likewise, this court entertained jurisdiction on a writ of error to the Circuit Court, in the *Kenyon* case, *supra* (204 U. S. 349).

Plaintiffs in error proceeded in this case on the theory that the bond in question was given pursuant to the Act of February 24, 1905, that the jurisdiction is determined under the facts by the Judiciary Act of 1887-1888, and that the right of intervention in a suit brought by the United States is expressly given to creditors under the Act of February 24, 1905.

Respectfully submitted.

JESSE R. LONG,

HOBART P. YOUNG,

*Attorneys for Plaintiffs in Error
other than the United States of
America.*

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, PAN-AMERICAN Bridge Company, Denny-Renton Clay & Coal Company, et al., plaintiffs in error,	} No. 63.
<i>v.</i>	
CONGRESS CONSTRUCTION COMPANY, S. N. Crowen, and Peter F. Reynolds.	

*IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.*

REPLY BRIEF FOR THE UNITED STATES ON JURISDICTIONAL QUESTION.

The jurisdiction of the Circuit Court as a Federal court was clearly in issue. The very question presented is whether, under the statutes regulating the jurisdiction of the Circuit and District Courts of the United States, the Circuit Court for the Northern District of Illinois had jurisdiction of this case.

Whenever it is necessary to construe the statutes of the United States regulating the jurisdiction

of the particular Federal court for the purpose of determining whether it has jurisdiction of a given case, the jurisdiction of that court as a Federal court must necessarily be involved. Here, the United States asserts that the Circuit Court for the Northern District of Illinois has jurisdiction under the provisions of the judiciary acts of 1887-88, while defendant in error contends that the act of February 24, 1905, deprives that court of jurisdiction in this case and vests it in the Circuit Court for the Western District of Washington, where the contract was to be performed.

The question presented is not, as is contended, which of two Federal courts has jurisdiction, but whether the Circuit Court for the Northern District of Illinois has jurisdiction under the statutes regulating its jurisdiction. But were it otherwise, the jurisdiction of each as a Federal court would be involved.

Defendant in error relies on cases which simply hold that questions involving the power of a circuit or district court to take certain action in a cause within its cognizance as a Federal court do not present jurisdictional matters reviewable by direct appeal by the act of March 3, 1891. In this case we are not concerned with any action of the Circuit Court for the Northern District of Illinois as a judicial tribunal in a case within its jurisdiction as a Federal court. The Circuit Court has declined to consider the case at all, because not within its jurisdiction as a Federal court as defined by statute.

The jurisdiction of Circuit and District Courts of the United States as Federal courts is regulated by one of two considerations—the subject matter of the action and the parties thereto. In this case the United States asserts jurisdiction in the Circuit Court for the Northern District of Illinois under the judiciary acts of 1887–88, because the United States is a party, and those acts limit the suit to the district whereof the defendant is an inhabitant. Defendant in error contends that the general jurisdiction of the Circuit Court under those statutes of suits in which the United States is a party is limited by the act of February 24, 1905. Clearly, the sole question presented goes to the jurisdiction of the Circuit Court as a court of the United States, under the applicable statutes.

Respectfully submitted.

WILLIAM R. HARR,
Assistant Attorney General.





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Circuit Supreme Court, U. S.
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JAMES H. MCKENNEY,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1911.

No. 63

UNITED STATES OF AMERICA, PAN-AMERICAN
BRIDGE COMPANY, DENNY-BENTON CLAY & COAL
COMPANY, ET AL.,

Plaintiffs in Error,

VS.

CONGRESS CONSTRUCTION COMPANY, S. N. CROWEN
AND PETER F. REYNOLDS,

Defendants in Error.

In Error to the Circuit Court of the United States for the Northern District
of Illinois.

BRIEF ON JURISDICTIONAL QUESTION.

ALLEN G. MILLS,

Attorney for S. N. Crowen.



IN THE
SUPREME COURT OF THE UNITED STATES,

October Term, 1911.

No. 63.

UNITED STATES OF AMERICA, PAN-AMERICAN
BRIDGE COMPANY, DENNY-RENTON
CLAY & COAL COMPANY, *et al.*,
Plaintiffs in Error,
vs.

CONGRESS CONSTRUCTION COMPANY, S. N.
CROWEN AND PETER F. REYNOLDS,
Defendants in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF ON JURISDICTIONAL QUESTION.

The question of jurisdiction may be presented to the court at any time before a final disposition of the case.

Under Section 5 of the Court of Appeals Act of March 3, 1891, Chap. 577, 26 Stat., 826, the plaintiffs in error have no right to sue out a writ of error

in this case in the Supreme Court of the United States. An appeal should have been taken to the Circuit Court of Appeals. The statute contemplates an appeal direct to the Supreme Court, only in cases where the jurisdiction of the court as a Federal Court is involved.

The court will take notice of, and inquire as to, its own jurisdiction, whether the question is raised by counsel or not. *Mansfield, etc., Co. v. Swan*, 111 U. S., 379.

“The question of jurisdiction which the statute permits to be certified to this court directly must be one involving the jurisdiction of the Circuit Court as a Federal Court, and not simply its general authority as a judicial tribunal to proceed in harmony with established rules of practice governing courts of concurrent jurisdiction as between each other.”

Louisville Trust Co. v. Knott, 191 U. S., 225, 233.

Fore River Ship Building Co. v. Hagg, 219 U. S., 175.

The only question certified in this case and shown in the record is one not in any way involving the jurisdiction of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, as a Federal court. It is solely a question of the jurisdiction between one Circuit Court of the United States, and another Circuit Court of the United States, to-wit: did the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, Seventh Circuit, have jurisdiction in the case at bar, or did the Cir-

cuit Court for the Western District of Washington, Northern Division, Ninth Circuit, have jurisdiction of the subject-matter involved in this suit.

It seems clear from the decisions cited above that the writ of error in this case should be dismissed for want of jurisdiction.

Respectfully submitted,

ALLEN G. MILLS,
Attorney for the Defendant in Error,
S. N. Crowen.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 237

UNITED STATES OF AMERICA, PAN-AMERICAN
BRIDGE COMPANY, DENNY-RENTON
CLAY & COAL COMPANY ET AL.,
Plaintiffs in Error,
vs.

CONGRESS CONSTRUCTION COMPANY, S. N.
CROWEN AND PETER F. REYNOLDS,
Defendants in Error.

In Error to the Circuit Court of the United States
for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANT,
S. N. CROWEN.

The facts in this case stated briefly in their
chronological order are as follows:

1. The Congress Construction Company, an Illinois corporation, entered into a contract with the United States of America on the fifth day of April, 1906, whereby the Congress Construction Company undertook to furnish the material for, and construct within twelve months, a boiler and blacksmith shop

at the United States Navy Yard at Puget Sound, Bremerton, Kitsap County, in the State of Washington, being in the western district of Washington. The contract was modified by changes subsequently made by the government, and was in all respects fully completed in compliance with the requirements of the original contract, as modified, and was accepted and paid for by the United States of America during the month of July, 1907.

2. Said Construction Company gave a penal bond in the usual form required by the statute as amended by Act of Congress on February 24, 1905 (Chapter 778, 32 Stat. L., 811).

3. Thereafter on June 1, 1908, a suit was commenced in the United States Circuit Court for the Northern District of Illinois, Eastern Division, against the principal and sureties on said bond in which suit the United States of America is plaintiff.

The declaration filed in behalf of the plaintiff, by E. W. Sims, United States attorney in and for the Northern District of Illinois, is composed of three counts. In each and every count of the declaration the averment is made that the Congress Construction Company completed the work in all respects, according to said contract as modified and according to the plans and specifications attached to said contract, and forming a part thereof, and to the satisfaction of the Chief of the Bureau of Yards and Docks, and that thereafter said contract was accepted by the plaintiff in the month of July, 1907, and thereafter full payment was made by the said plaintiff to the said Congress Construction Company

of the amount specified in said contract, and the modifications thereof; but the plaintiff alleges that the said defendant, the Congress Construction Company, did not promptly make payments to all persons supplying it with labor and materials in the prosecution of the work provided for in said contract, and there is now due, owing and unpaid from the Congress Construction Company to such persons, firms and corporations furnishing materials under said contract, a large sum of money, to-wit: \$30,000; and that the said plaintiff is therefore damnified to the amount thereof.

4. On June 4, 1908, there was filed in the clerk's office an affidavit by Jesse R. Long setting forth that he is the attorney for certain creditors of the defendant, the Congress Construction Company, for labor and material furnished to the Congress Construction Company and used by it in the prosecution of the work contemplated by said contract. The affidavit then names fourteen different companies and individuals, and further states that the said creditors are all of the known creditors of the said defendant, the Congress Construction Company, who furnished and supplied labor and material in the prosecution of the work under the said contract.

The affidavit sets up that eleven of said fourteen creditors and individuals are residents of Seattle, Washington, one is located at Everett, Washington; one at New Castle, Indiana, and one at Columbus, Ohio.

The affidavit further states that there is published at Bremerton in the said State of Washington, a

weekly newspaper of general circulation, known as the Bremerton News, and that said town of Bremerton, Washington was and is a town in the said state adjoining the navy yard, which is a United States naval reserve where the said contract between the defendant, the Congress Construction Company, and the plaintiff was to be performed.

5. On June 18, 1908, the Honorable Kenesaw M. Landis, District Judge, entered an order in said cause that public notice be given to all persons, firms or corporations who furnished said Congress Construction Company labor or material under said contract at Puget Sound, Bremerton, Washington, and to all other persons interested that the United States of America had filed its suit in the United States Circuit Court for the Northern District, Eastern Division, at Chicago, Illinois, against the defendant, the Congress Construction Company, S. N. Crowen, and Peter F. Reynolds, sureties on the bond given by the said Congress Construction Company in connection with its contract with the United States of America for the construction of a boiler and blacksmith shop at Puget Sound, Bremerton, Washington.

Said notice further provides:

“You are further notified that in court, under an Act of Congress of the United States of February 24, 1905, C. 778 (33 Stat., 811), you will have the right to intervene, until after the first day of the October term of said court, to-wit: the first Monday in October, 1908, in said cause and assert any claim that you may have against the Congress Construction Company for labor and material furnished it in the construction of the work under said contract, and you

are further notified that unless you do appear and intervene in said cause and set up your claim, if any, on or before the time above mentioned, you will be forever barred from sharing in any manner in said proceedings."

The order provides further that in addition to publishing the above notice in the Bremerton News at Bremerton, Washington, a copy of the order be mailed to all of the known creditors of the Congress Construction Company who furnished labor and material for the said boiler and blacksmith shop, and that said notice be mailed by the clerk of the court at least three months prior to the first day of the October term of the said Circuit Court, and that the notice be published at least once a week for three successive weeks in a newspaper of general circulation published in the town of Bremerton, State of Washington, and that the last of said publications be at least three months prior to the first day of the October term of said court.

Thereafter on the 22nd day of June, 1908, Henry S. Stoddard, Clerk of the said Circuit Court, filed an affidavit, stating that he mailed said notice to all of said creditors on the 22nd day of June, 1908.

Thereafter Carl Jensen made an affidavit, stating that the notice aforesaid was published in the Bremerton News, a weekly newspaper, published regularly on Saturday of each week at Bremerton, Kitsap County, in the State of Washington. That said newspaper is now and during all of said time was of general circulation in said county and state. Said affidavit is endorsed, "Filed May 25, 1909, *nunc pro tunc* as of August 1, 1908. H. S. Stoddard, Clerk."

Thereafter on the 8th day of July, 1908, came S. N. Crowen and entered his appearance especially for the purpose of contesting the jurisdiction of the court, and filed his plea in said entitled cause. (Rec., 34.)

The plea sets up the contract and bond and the United States statute under which the said bond was given, providing that all suits upon bonds given under said statute shall be brought in the name of the United States in the Circuit Court of the United States in the district in which said contract was to be performed and executed, irrespective of the amount in controversy in such suit, and not elsewhere.

The defendant, S. N. Crowen, in his plea further says that before and at the time of the commencement of such action of the United States of America, the Circuit Court of the United States for the Western District of Washington has had and still has exclusive jurisdiction of said action; and that the Circuit Court of the United States of America for the Northern District of Illinois, Eastern Division, did not have jurisdiction; and that he, the said S. N. Crowen, was not found or served with process in the said action issued out of the Circuit Court of the United States for the Western District of Washington, but was found and served with process in the said action issued out of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

6. The defendant, Peter F. Reynolds, on the 9th day of July, 1908, also entered his special appearance and filed a plea setting forth that the Circuit Court of the United States in the Western District

of Washington and not at Chicago in the Northern District of Illinois, had jurisdiction of the parties and subject matter.

7. Said S. N. Crowen and Peter F. Reynolds each respectively filed their special appearances on the 13th day of July, 1908, for the purpose of contesting the jurisdiction of the court in the matter of the application of the intervening petitioners, Pan-American Bridge Company, Seattle Paint Company *et al.*

8. On the 18th day of September, 1908, the plaintiff filed a demurrer in the clerk's office to the pleas filed by S. N. Crowen and Peter F. Reynolds respectively.

9. Thereafter the following alleged creditors filed their respective intervening petitions by leave of court first had and obtained: Pan-American Bridge Company, July 8, 1908; Western Hardware & Metal Company, July 8, 1908; Denny-Renton Clay & Coal Company, July 16, 1908; Seattle Paint Company, July 16, 1908; Hoffins Steel & Equipment Company, July 16, 1908; Robinson Manufacturing Company, July 16, 1908; Martin Gravel Company, July 18, 1908; Port Orchard Route, July 18, 1908; International Fence & Fire Proofing Company, July 23, 1908; Schwabacher Hardware Company, September 30, 1908; and F. T. Crowe & Company, September 30, 1908.

10. On February 13, 1909, the cause having been argued upon demurrer of the plaintiff to each of the pleas in abatement to the jurisdiction of the court, the demurrer was overruled and the summons quashed for want of jurisdiction in the Circuit Court

for the Northern District of Illinois, Eastern Division, to hear and determine the cause; and the defendants S. N. Crowen and Peter F. Reynolds were ordered to go hence without day, to which ruling of the court the plaintiff and the intervenors duly objected and excepted.

The court further found that the Congress Construction Company had failed to appear or defend the suit; and it further appearing to the court from the plaintiff's declaration, that the Circuit Court for the Northern District of Illinois had no jurisdiction of the cause; it was therefore considered by the court that the defendant the Congress Construction Company go hence without day.

The court further found from the allegations contained in the plaintiffs' declaration and the allegations in the intervening petitions filed by all of the intervenors, that the said court had no jurisdiction of the actions brought by them, and therefore dismissed the intervening petitions and each and all of them for want of jurisdiction to which ruling of the court the intervenors duly objected and excepted.

11. On the 9th day of May, 1909, there was filed in the clerk's office of said court a certain certificate of jurisdiction question as follows:

"In the above entitled cause I hereby certify that the judgment of dismissal herein made is based solely on the ground that this court is without jurisdiction to entertain and determine said cause, and that the declaration and intervening petitions herein, in my opinion disclose that the work performed and material furnished by said intervenors, were performed and furnished in the State of Washington, and not in

the Northern District of Illinois; and that treating the demurrers to the pleas in abatement as presenting the question of jurisdiction, and acting also independently of the demurrer, and on the court's own motion, the suit is dismissed only for the reasons above stated—that is, that said work not having been performed and said materials not having been furnished in the Northern District of Illinois, there is consequently no jurisdiction in this court to hear and determine this cause.

This certificate is made conformably to Act of Congress of March 3, 1891, and the pleadings and orders and judgment in said cause will be sent up as part of the proceedings, together with this certificate."

Wherefore the plaintiff and the intervening petitioners pray for the allowance of a writ of error to the Supreme Court of the United States in said cause, as authorized by Section 5 of the Act of Congress of the United States, approved March 3, 1891, and pray the Honorable Court that this writ of error be allowed solely on said question of jurisdiction.

The five assignments of error made by the plaintiffs in error all amount to substantially one and the same assignment, to-wit: that the Circuit Court erred in finding that it had no jurisdiction of the action brought and for that reason erroneously entered the order of dismissal.

It appears from the record in this case that the suit was instituted in the name of the United States of America, ostensibly for its own beneficial use, instead of being commenced for the use and benefit of the sub-contractors or material men, as contem-

plated by the statute, who are the real beneficial parties in interest.

The reason for beginning the suit in this manner is apparently based on an erroneous construction of the statute governing the institution of suits upon bonds given in compliance with the requirements of the statute.

The theory of the attorneys representing the plaintiff and the intervening petitioners is, that under the provisions of the statute this suit could not lawfully be maintained in the United States Circuit Court for the Northern District of Illinois, if it be commenced for the use and benefit of the sub-contractors and material men, but that by commencing the suit ostensibly for the beneficial use of the United States of America, jurisdiction would thereby be conferred on the United States Circuit Court for the Northern District of Illinois.

This theory is erroneous because the statute clearly contemplates that but one suit shall be brought, and that the suit must be brought in the name of the United States of America in the Circuit Court of the United States in the district where the contract was to be performed and executed, and not elsewhere.

BRIEF AND ARGUMENT.

Counsel for plaintiffs in error, other than the United States of America, reiterates with much persistence that this is an ordinary common law action of debt invoked pursuant to Sec. 639 of the Judiciary Act.

In the brief and argument for the intervening petitioners at page 15 is the following:

"This statute (statute of February 24, 1905) does not affect the jurisdiction of the Circuit Court for the Northern District of Illinois, as originally invoked, under the pleadings in this cause, because the action is not brought by the United States by virtue of said statute alone, although that act recognizes the right of the government to sue on such bond—."

On page 19 is the following:

"Our view of the statute is that it affirms the common law right of the government to take such a bond as was taken in this case * * *."

On page 28 is the following:

"The right of the government to maintain its suit is not derived from that statute and the place it shall sue is not fixed thereby * * *."

If this position is tenable and this action is not founded upon the statute of February 24, 1905, but is based upon the general judiciary act, Sec. 639, then there is no justification for the filing of intervening petitions by creditors, and the action of the trial court in dismissing the intervening petitions was correct. There is no such proceeding known to the common law as intervening petitions in an action at

law on a penal bond. If the suit was commenced by the United States as a common law action pursuant to Section 639 of the Judiciary Act, then it must proceed, if at all, in accordance with the provisions of that statute. The suit cannot be commenced under one statute, conferring jurisdiction on one court and afterward be prosecuted under another statute conferring an entirely different jurisdiction not only as to the subject matter but also as to the parties and the court.

It was long ago decided that there is no general common law of the United States as a nation, and hence the common law rights administered by the federal courts arise incidentally in exercising some statutory jurisdiction conferred upon them.

In *Smith v. Ala.*, 124 U. S., 465, Mr. Justice Mathews says:

“There is no common law of the United States in the sense of a national customary law distinct from the common law of England as adopted by the several states each for itself, applied as its local law, and subject to such alterations as may be provided by its own statutes. A determination in a given cause of what that law is may be different in a court of the United States from that which prevails in the judicial tribunals of a particular state. This arises from the circumstance that the courts of the United States in cases within their jurisdiction, where they are called upon to administer the law of the state in which they sit, or by which the transaction is governed, exercise an independent though concurrent jurisdiction and are required to ascertain and declare the law according to their own judgment.”

The common law imposes no obligation upon the

government to take a bond such as was taken in this case. If the action which has been brought upon this bond is not based upon the statute and is, as plaintiffs in error allege, the ordinary common law action of debt, the particular pleadings and forms and modes of procedure adopted by the plaintiff, must conform to those existing in the courts of record of the State of Illinois.

Sec. 5 of the Act of June 1, 1872, reads as follows:

"The particular pleadings and forms and modes of proceeding in civil causes other than equity and admiralty causes in the Circuit and District Courts shall conform as near as may be to the particular pleadings and forms and modes of proceeding existing at the time in like causes in the courts of record of the state within which such Circuit or District Courts are held, any rule of court to the contrary notwithstanding."

The right of other creditors to intervene in a proceeding at law brought by one creditor is certainly not a right recognized by the common law as administered by the courts of Illinois. Furthermore, there is only one proceeding in the courts of law in which the State of Illinois permits adverse claimants or creditors to file intervening petitions. Such proceedings may be had in attachments in courts of record pursuant to Sec. 29, Chap. 11 of the Illinois Revised Statutes. The courts of Illinois have, however, many times decided that proceedings by attachment are not within the scope of the general powers of a court of superior jurisdiction, but such proceedings may be exercised only by a special statutory authority or power.

In *Haywood v. Collins*, 60 Ill., 328, Mr. Justice Thornton says:

“An attachment is not a proceeding in common law. It exists and is conferred alone by the statute and is in derogation of the common law. It derives all its validity from the statutes and in all essential particulars must conform to their requirements.”

This doctrine was reaffirmed in *Pack, Woods & Co. v. American Trust & Savings Bank*, 172 Ill., 192.

Mr. Justice Carter in quoting *Dennison v. Blumenthal*, 36 Ill. App., 385, says:

“Proceedings by attachment being in derogation of the common law and deriving all their validity from the statute must conform in all essential particulars to the requirements of the statute.”

Since the laws of Illinois do not permit an intervention or interpleader by creditors in any suit at law (excepting the statutory attachment suits), and since no such proceeding is authorized by the general Judiciary Act of the United States, the intervening petitions filed in this cause should be dismissed, if plaintiffs in error's contention is correct that this proceeding is not one based upon the statute of February 24, 1905.

The contention of plaintiffs in error seems to be that an action by the government in which other creditors have a right to intervene is not an action based upon the statute, but that an action instituted in the name of the United States by one or more of the creditors must be based upon the statute. In other words, their contention is that the government may start a suit independently of the statute, and

that the other creditors may intervene and claim the benefit of the statute without being bound by its requirements as to the place of bringing suit.

Without disputing the right of the government to bring an action upon this bond as a common law bond; such is not the case made out by the declaration filed by the plaintiff. The form of the bond as set out in the various counts of the declaration contains the substance of the language of the statute. In the face of the allegations contained in the declaration, filed by the United States, how can it be said the action is not a statutory action?

No showing is made in the pleadings that the bond was not given for the purposes contemplated in the statute or that it is not in conformity with the letter or spirit of the same. In *Lowe v. Guthrie*, 44 Pac., 198, it was held that the intention of the parties to a bond required by statute must be disproved by clear and convincing evidence in order to negative the presumption of law that the intention of the parties was to execute such a bond as the law required, and even if its terms may bear a broader construction, the liability of the sureties will be confined to the liability under the statute requiring such bond.

If the declaration of the plaintiff in error had stated a cause of action upon a common law bond there would have been no right on the part of creditors to file intervening petitions, as such a right can arise only by reason of the statute, and not by reason of any liability or proceeding at common law. If the declaration had set up a cause of action upon

a common law bond in one count, and upon a statutory bond, in another count, the defendants clearly would have the right to require the plaintiff to elect upon which counts they wish to prosecute as such allegations would constitute inconsistent and contradictory grounds of action.

The joinder of a count upon the statute with one based upon a common law right is not permissible, especially when the pleas and judgment are not the same. If this action could be brought on a common law right, a recovery could be had only by the United States of America, whereas, if based on the statute, the judgment would have to be distributed and apportioned among the intervenors, subject to the prior claim of the United States. The latter proceeding and judgment are wholly unknown to the common law. The pleadings, affidavit and order of publication herein can be based only upon the statute, for no such practice can be discovered in any authorized common law action.

Notification by publication in a jurisdiction 3,000 miles outside the jurisdiction where the case is to be heard, is certainly a proceeding unknown to the common law and not justifiable by the practice in suits at law in Illinois, or in any other court.

23 Cyc., 396.

Bottomley v. Port Huron, 44 Mich., 542.

Swift v. Applebone, 23 Mich., 252.

McKenzie v. Gibson, 73 Ala., 204.

Wachusett National Bank v. Steel, 135 Mich., 688.

The plaintiff in error in this case did nevertheless in making a pretense at compliance with the requirements of the statute, cause publication to be made in a newspaper published in Bremerton, Washington, for the purpose of conferring jurisdiction upon the United States Circuit Court to be regularly held at Chicago, Illinois. The notice and publication must be made in suits commenced by the United States Government for its own use and benefit under the statute, as well as in suits commenced in the name of the United States Government for the use and benefit of subcontractors or material men.

It is hardly likely that Congress would have required notice to be given and publication to be made in the State of Washington in order to confer jurisdiction upon the Circuit Court of the United States situated in the State of Illinois. But one conclusion can be drawn from reading the entire statute governing the giving of the bond in question and the jurisdiction conferred and the practice in actions to be commenced upon it, and the inevitable conclusion is, that it was the intention of Congress that but one suit should be commenced on the bond and that such suit must be commenced in the name of the United States, in the district in which said contract was to be performed and executed and not elsewhere, and that all interested parties must be given an opportunity to present and litigate their respective claims in that one suit. If Congress had contemplated the institution of more than one suit there certainly would have been some other provision for a different kind of publication notice.

The allegations of the declaration clearly show that the bond in question was that contemplated and required by the very terms of the statute. The same instrument cannot be at the same time both a common law bond for the purpose of one interested party and a statutory bond for the purpose of regulating the procedure of other parties in the same suit. The statute requires that suit must be instituted in the name of the Government as plaintiff in any event. Plaintiffs' in error contention, therefore, reduced itself to the proposition that the intervening creditors ought to have the rights given them by the statute but yet are not bound by the terms of the statute in regard to the place where the suit is to be brought. If jurisdiction is invoked by reason of the general judiciary act rather than by reason of the statute of February 24, 1905, there can certainly be no intervention by creditors. It would seem strange that this statute which clearly contemplates the bringing of one suit only and that by the United States of America as plaintiff, would permit the suit to be brought in the district where the defendants may happen to reside if brought for the use of one beneficiary, but if brought for the use and benefit of all the interested parties, that it would then require the suit to be brought in the district where the contract was to be performed and not elsewhere. This court has decided that the United States is an interested party, and not a mere nominal party, in all suits upon bonds given under the statute in question. In view of that decision it is difficult to understand how counsel can insist that "the limitation in said statute as to the place the suit shall be

brought—that is, where the work was done—does not apply to actions brought by the United States for damages sustained by it.” In one part of the brief filed by plaintiff in error the contention is made that the United States has the right to sue under the general judiciary act when suing for its own damages. If that position is tenable, it is fully answered in this case by the allegations contained in every count of the plaintiffs’ declaration, that the contract was fully performed in every particular and the work accepted by the United States. It has many times been held that laws which regulate the mode of proceeding in courts and which do not deny the public any rights are binding upon the United States as well as upon any creditor. In the *United States v. Knight*, 14 Peters, 30, the court held that the United States, as an execution creditor, is subject to the same laws in regard to the imprisonment of debtors as other creditors because such laws merely regulate modes of proceeding.

The statute requires publication to be made in all suits instituted under the provisions of the Act of February 24, 1905. Not only a personal notice to all known creditors, but in addition thereto, notice by publication in some newspaper of general circulation published in the state or town where the contract is being performed is made mandatory by the statute.

In *United States v. Thompson*, 93 U. S., 586, it was held in an insolvency proceeding that a judgment in the state court in which the United States is claimant cannot be re-examined on a writ of error, except

where the same relief would be given a private party, even though the judgment of the trial court disallowed the claim of the United States *in toto*.

In *Green v. United States*, 9 Wall., 655, the Supreme Court construed the act of July 2, 1864, to the effect that there shall be no exclusion of any witness in civil actions because he is a party to or interested in the issue tried. It was contended by the Attorney General that this statute was not binding in a suit brought by the United States. Mr. Justice Bradley replying to this argument, said:

“It is urged that the Government is not bound by a law unless expressly named. We do not see why this rule of construction should apply to acts of legislation which lay down general rules of procedure in civil actions. *The very fact that it is confined to civil actions would seem to show that Congress intended it to apply to actions in which the Government is a party as well as those between private persons.*”

In *Fink v. O'Neil*, 106 U. S., 272, it was held, that a judgment debtor is entitled to the same exemptions in suits in which the United States is a judgment creditor as in suits where the judgment creditors are private parties.

In *United States v. U. P. R. R. Co.*, 105 U. S., 263, it was held that a writ of error will not lie from the final decree or judgment of a territorial supreme court unless the amount in controversy exceeds \$1,000, or the decision be rendered upon a writ of habeas corpus involving the question of personal freedom, and *the same provision applies to a suit where the United States is plaintiff.*

Plaintiffs in error seek to construe the statute in

question so as to allow the Government a cause of action independent of and not based upon the statute in which creditors may intervene and be given the rights of the statute without being limited as to the place in which the suit is brought by the very terms of said statute.

It would seem from a cursory examination of the record in this case that the creditors have no right of intervention in a suit at law, except where such rights are given by statute; that in Illinois there can be no intervention or interpleader in any suit at law other than in an attachment proceeding, which the courts of that state have repeatedly held to be statutory and in derogation of the common law. If this action is not brought under the statute there can be no intervention on the part of the creditors and the trial court held correctly in dismissing these petitions for want of jurisdiction.

If the action was brought under the statute the order of dismissal was necessary because the statute itself confers exclusive jurisdiction on the Circuit Court of the United States in the district in which the contract was to be performed and executed, irrespective of the amount in controversy in such suit, and not elsewhere.

In the case of the *United States Fidelity & Guaranty Co. v. United States* for the benefit of Kenyon, 204 U. S., 349, at page 358, the court has already pointed out the proper course of action and the court having jurisdiction of suits upon bonds of the character of the bond sued upon here, to wit: the Circuit Court of the United States in the district in which

such contract was to be performed and executed, irrespective of the amount in controversy in such suit, and not elsewhere. This court has again decided in the case of the *United States Fidelity & Guaranty Co. v. United States* for the use and benefit of Struthers, Wells Co., 209 U. S., 306, at page 315, that the part of the statute providing for the payment of the claims of the United States in full and thereafter the distribution of the balance recovered in a suit upon the bond *pro rata* among the intervenors, is a matter of substantive right and not a matter of procedure. At page 316 the following language is used:

“If the limitation as to the district in which the suit upon the bond could be brought were to be regarded as simply matter of procedure (which we do not assert), we still think it is not to be construed as applying retrospectively.”

In the case of *Davidson Bros. Marble Co. v. United States* on the relation of Gibson, 213 U. S., 10, at page 17, the court made use of the following language:

“While the Act of 1894 authorized the person supplying labor and materials to bring suit upon the bond in the name of the United States against the contractor and sureties, it did not specify the court in which the suit should be brought, and the omission was not supplied until the enactment of the law of 1905. * * *”

And in another part of the same decision the following language is used:

“As this suit was brought after the passage of the amending act, it was brought in the only district where it could be maintained, if the

amending act were retrospective. But it is not retrospective."

Prior to the Act of 1905 the jurisdiction of the United States courts upon bonds given under the statute was determined by the general provisions of the statute relating to that subject. By the enactment of the amendment the jurisdiction of the court is removed from the general provisions of the statutes relating thereto and is covered specifically by the statute as amended.

Under the Act of March 3, 1875, c. 137, Sec. 5, the Circuit Court should dismiss a suit where the person named as complainant has no beneficial interest in the subject-matter thereof, but has been improperly and collusively used for the purpose of creating a cause cognizable there.

Hayden v. Manning, 106 U. S., 586; *Detroit v. Dean*, 160 U. S., 537, 541.

The statute confers exclusive jurisdiction on the Circuit Court of the United States and in express terms prohibits the bringing of suits on the bond in any other court than the United States Circuit Court and for that reason alone the plaintiff had no right to begin suit under the general judiciary act for the sole purpose of conferring jurisdiction upon the Circuit Court of the United States for the Northern District of Illinois and then undertake to proceed in the prosecution of the suit, under the statute as amended by the Act of February 24, 1905.

The attorney for the intervening petitioners has devoted considerable time and space in his brief and argument, in an attempt to show that the United

States, as plaintiff, is entitled to recover at least nominal damages. His argument upon this point is presumably based upon the theory that the United States must be entitled to recover a judgment for some amount for its use and benefit, as a prerequisite to its pretended right to maintain the suit at all in the Circuit Court for the Northern District of Illinois. This theory would be justifiable if the suit be brought under the provisions of the general judiciary act and not under the statute as amended by the act of February 24, 1905, but if the suit is brought under the general judiciary act then there is no provision to be found anywhere justifying the filing of intervening petitions. There can be no presumption of nominal damages, when it appears affirmatively in the record that the plaintiff has suffered no actual damage. The presumption of nominal damages where a breach of some condition in the bond is shown is not a conclusive presumption, but is only presumed when (1) there is no sufficient allegation of special damages in the declaration, or (2) where there is proof of the breach of the condition but no proof of special damages. In either case the court will presume that at least nominal damages must have resulted from the breach of the condition in the bond, but this presumption cannot be indulged, when there are allegations in the declaration of the plaintiff which are in direct conflict with and positively prohibit the presumption; and the same is true in every case where the evidence shows conclusively that no special damages have been sustained. It was the intention of the parties as evidenced by the conditions of the bond in question that if the contract

be performed the bond was to be void and of no effect. The plaintiff has alleged in the declaration that the contract was fully performed to the entire satisfaction of the United States, and the work accepted by it, and these allegations expressly negative the theory that the United States as plaintiff might under the circumstances recover nominal damages, for its own use and benefit.

In one part of the brief filed for plaintiffs in error, the attention of the court is directed to the terms of the statute itself which prohibit the recovery by the United States of even nominal damages if the United States cannot prove actual damages, because the statute specifically provides that the recovery upon the bond shall be distributed, first, to the United States in full of its claim and then *pro rata* among the intervening petitioners, if there be insufficient to pay all in full. Par. (d), page 16 of the intervening petitioners' brief is as follows:

"The only effect of the statute under the pleadings in this case is to allow sub-contractors to intervene and assert their claims, and to deprive the United States from recovering as its own damages the amounts of sub-contractors' claims."

Again on page 19 of the same brief is the following:

"And that to the extent that sub-contractors can assert their own claims the government cannot recover for them."

It will be observed at page 7 of the intervenors' brief that the total amount of their claims is \$24,710.32, while the total liability of the sureties on the

bond is \$18,000. It therefore appears by taking the most favorable view for the plaintiff that there would be an insufficient amount recoverable to pay in full all claims of the intervenors but would necessitate pro rating the amount recovered, and under the terms of the statute as applied to the facts in this case as set forth by the allegations of the declaration the United States would be affirmatively prohibited from recovering even nominal damages, for if the government could be allowed to take any part, even though that part be merely nominal, it would of necessity have the right to appropriate to its own use all of the amount recovered in a suit upon the bond, while the statute provides that all remaining after the government has been fully paid, shall be distributed, *pro rata*, if need be, between the intervenors.

In every case cited in the brief filed in behalf of the intervening petitioners and in every other similar case that I have been able to find in which nominal damages were recovered, where the opinion of the court is sufficient to determine what the facts were, one of two sets of facts is invariably found to exist; either the declaration was so drawn as not to permit the recovery of special damages, or the evidence was not sufficient to show special damages, and under such circumstances the court will presume that nominal damages at least, must have followed the breach. Where, however, the facts appear by the evidence or the allegations of the declaration, the court will not indulge in any presumptions of nominal damages when such presumptions would be in conflict either with the law or the facts. In the case

at bar the declaration not only fails to show any special damages to be sustained by the United States but on the contrary shows affirmatively the absence of all special damages, so far as the United States is concerned. Therefore, the rule that nominal damages at least will be presumed to follow a breach of a condition in the bond, which is applicable in certain cases, is not applicable in the case at bar for the very apparent reasons stated. The rule laid down by the courts would seem to permit the recovery of nominal damages in those cases and those cases only where the declaration or the evidence go only so far as to show a breach of some condition of the bond but are entirely noncommittal beyond that point. Under such circumstances there is room left for presumptions, but when the real facts, concerning the question of damages, are made to appear, either by the evidence or if the presumption that might otherwise be indulged is expressly negatived by the allegations of the plaintiffs' declaration, there is no room left for any presumptions.

The question of the right of the United States to recover at least nominal damages can not confer jurisdiction. If the Circuit Court of the United States for the Northern District of Illinois has jurisdiction, that jurisdiction is acquired from the provisions of the statute conferring jurisdiction and not by reason of the right or lack of right to recover nominal damages.

Plaintiffs' in error closing contention is for a so-called "reasonable" construction of the statute. Upon an assumed state of facts not justified by the

record in this case they contend that unless the plaintiffs' construction is upheld the government "has no actual remedy" and that "any other construction is unreasonable and does violence to both the letter and the spirit of the law."

It is with some reluctance that defendant in error would again call attention to the record wherein the judgment of the trial court was rendered not in a final hearing on the merits, so as to bar all other proceedings, but merely upon a plea in abatement of the present action. No adjudication could be had on the pleadings therein that would bar another suit in the proper jurisdiction, and no estoppel *in pais* could be predicated upon the ruling of the trial court and nothing contained in said order could in any way prevent suits against the original contracting parties.

While in some cases a plea in abatement must give the plaintiff a better writ, we know of no principle of common law pleading or of any section of the Illinois Practice Act or of any act of Congress, requiring the defendants in this case to show that plaintiffs in error have some other adequate remedy as a condition precedent to obtaining a judgment in their favor on a plea in abatement to the jurisdiction of the trial court of one particular district.

Even if it is granted that under the facts pleaded in this case that the assumption of the intervenors is correct and injustice would result from the working of this statute, no precedent is cited that would permit the court to pass on the political advisability

of the act or the adequacy of the statute to afford litigants a remedy.

In respect to the construction of statutes, which are laws subject to alterations or repeal at any time in the discretion of the legislative department of the government, Mr. Justice Story in *U. S. v. Dickson*, 40 U. S., 161, says:

“It is not to be forgotten that ours is a government of laws, and not of men, and that the judicial department has imposed upon it by the constitution a solemn duty to interpret the laws in the last resort; and, however disagreeable that duty may be in cases where our judgment shall differ from that of other high functionaries, it is not our liberty to surrender or to waive it.”

In *State ex rel. Morris v. Wrightson*, 22 L. R. A., 548, Depue, J., says:

“I know of no precedent or principle that would authorize the court to overturn the law passed by the legislature within constitutional limitations on the ground that it is unwise, impolitic, unjust, or oppressive, or even that it was procured by corrupt means. I concur in the views submitted by defendants’ counsel in their brief that ‘the relators must show that the law they attack is a violation of constitutional limitations.’ The moment they step beyond that line of attack they are on political ground, beyond the jurisdiction of the court.”

The same principle is stated with equal clearness and perspicuity in

Rison v. Farr, 24 Ark., 161; 87 Am. Dec., 52.

Blair v. Ridgley, 41 Mo., 68; 97 Am. Dec., 248.

Many other precedents might be cited affirming the domination of a statute within constitutional limitations notwithstanding practical construction to the contrary and conclusive arguments *ab inconvenienti*. As Chief Justice Taney in the famous case of *Scott v. Sanford*, 19 Howard, 393, decided in 1858, says:

“Any other rule of construction would abrogate the judicial character of this court, and make it the mere reflex of the popular opinions or passions of the day.”

The judgment of the trial court was based on an issue in abatement on the question of jurisdiction and was decided according to the plain terms of the statute.

For the purpose of criticizing the action of the trial court in dismissing the intervening petitions plaintiffs in error are compelled to assume an inconsistent and contradictory attitude towards the statute. Throughout the brief filed by the intervening petitioners the claim is made that this is an ordinary common law action of debt brought pursuant to the general Judiciary Act, and later the same parties contend that the creditors have the right to intervene pursuant to the Amendment of February 24, 1905, without being limited by its terms as to the place of bringing suit.

While the case made out by the pleadings shows affirmatively and positively that the United States has not been damnified, they maintain that the ruling of the trial court on the dilatory plea would deny the United States any “adequate or practicable remedy.”

It would seem to defendants in error that no sufficient reason is shown why an interpretation should be placed on the statute in question that is inconsistent with its plain terms and would confuse the procedure therein prescribed with that under the general Judiciary Act, and thereby nullify the plain intent of Congress that all claims of this kind should be adjudicated in one suit to be instituted in the United States Circuit Court for the district in which the contract was to be performed and not elsewhere. If this proceeding could be brought in a district other than where the work was to be performed and many miles away from the residence of the creditors the same difficulties would be encountered that were sought to be remedied by Congress by the amendment of the former act.

We believe the trial court arrived at the only conclusion that could properly be reached from a careful consideration and construction of the statute as amended by the Act of February 24, 1905, as applied to the record in this case, and we therefore respectfully request the court to dismiss the writ of error.

ALLEN G. MILLS,
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S. N. Crowen.